TEXAS REGISTER

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Tony Bloom
12th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0340

Ms. L. Marliessa Clark, C.P.A.

Hamilton County Auditor

Hamilton County Courthouse

Hamilton, Texas 76531

Re: Procedures applicable to a county's accounting for and spending excess contributions returned to a county pursuant to section 26.008 of the Government Code (RQ-0311-GA)

SUMMARY

Section 26.008 of the Government Code applies to court costs collected by certain counties and remitted to the comptroller to supplement county judges' salaries. Under section 26.008, the Comptroller of Public Accounts returns excess contributions to the participating counties, to be used only for court-related purposes for the support of the judiciary. Section 26.008 does not require the Hamilton County Commissioners Court to create a separate fund to account for the excess contributions or to adopt a separate budget for those funds. The Hamilton County Commissioners Court does not have authority to adopt a special budget, distinct from the annual county budget, for the excess contributions.

The "court-related purposes" for which the excess contributions may be spent include judges' salaries and any other costs necessary to support the operation and maintenance of the courts and the administration of justice. Section 26.008 does not prohibit the commissioners court from allowing the excess contributions to be accumulated from year to year.

The county budget of a prior fiscal year may not be retroactively amended to provide that excess contributions received in that year were spent under that budget.

Opinion No. GA-0341

The Honorable Jana Duty

Williamson County Attorney

405 Martin Luther King, Suite 240

Georgetown, Texas 78626

Re: Whether a nonprofit corporation may offer a savings bond or prepaid bank credit card as a prize in a charitable raffle under the Charitable Raffle Enabling Act, Occupations Code chapter 2002 (RQ-0303-GA)

SUMMARY

Section 2002.002(1-a) of the Occupations Code, adopted by the 79th Texas Legislature, supersedes the definition of "money" articulated in Attorney General Opinion JC-0111. *Compare* Act of May 27, 2005, 79th Leg., R.S., H.B. 541, §1 (to be codified at TEX. OCC. CODE ANN. §2002.002(1-a)) *with* Tex. Att'y Gen. Op. No. JC-0111 (1999) at 4. Under the statutory definition, the term "money" means "coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency." Act of May 27, 2005, 79th Leg., R.S., H.B. 541, §1 (to be codified at TEX. OCC. CODE ANN. §2002.002(1-a)).

United States savings bonds and prepaid, or "stored-value," credit cards are not negotiable instruments. Accordingly, they are not "money" for purposes of section 2002.056(a) of the Occupations Code and may be offered and awarded as prizes in a charitable raffle.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200503076
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 26, 2005

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-463. The Texas Ethics Commission has been asked about the application of the contingent fee prohibition in §305.022 of the Government Code. (AOR-521)

SUMMARY

In the specific circumstances described in the request letter, there would not be a contingent fee for purposes of §305.022 of the Government Code.

This conclusion is specifically limited to the stipulated facts set out herein. Each case involving these issues must be determined on its own facts.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes:

(1) Chapter 572, Government Code;

(2) Chapter 302, Government Code;

(3) Chapter 303, Government Code;

(4) Chapter 305, Government Code;

(5) Chapter 2004, Government Code;

(6) Title 15, Election Code;

(7) Chapter 36, Penal Code; and

(8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200502961
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: July 20, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.1

The Commission on State Emergency Communications (CSEC) proposes amendments to §251.1, concerning regional plans for 9-1-1 service to include new criteria to accommodate Voice over the Internet Protocol (VoIP) telephone service, to streamline the rule in conjunction with development of related Program Policy Statement, and to delete references to Mobile PSAPs that are no longer applicable.

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Mallett has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be improved effectiveness and reliability of 9-1-1 call delivery systems in the state program regions throughout the state. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendments are proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, and 771.075; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, provide provisions for and enhance the effectiveness and efficiency of 9-1-1 service.

No other statutes, articles or codes are affected by the proposed amendment.

§251.1. Regional Strategic Plans for 9-1-1 Service.

(a) - (e) (No change.)

(f) All regional plans for 9-1-1 service must include one Primary PSAP and the following equipment and service at all PSAPs:

(1) - (3) (No change.)

[~~(4) One Primary PSAP per RPC. If there is more than one PSAP, the system may be arranged for two or more PSAPs to share the 24-hour duty requirement;~~]

(4) [~~(5)~~] TDD/TTY or TDD/TTY compatible equipment in compliance with the Americans with Disabilities Act (ADA) and in compliance with Commission Rule 251.4, Guidelines Accessibility Equipment;

(5) [~~(6)~~] A standby power supply for the 9-1-1 equipment;

(6) [~~(7)~~] Forced disconnect feature to allow the PSAP to clear incoming circuits when necessary;

(7) [~~(8)~~] The following redundant crucial service items [~~at each PSAP~~]:

(A) Network connections between each telephone central office or mobile switch and the SR;

(B) Network connections from the SR to the PSAP;

(C) Network connections from the ALI database to the PSAP;

(D) Database routers;

(E) Telephone sets and/or integrated ANI and ALI display call taking positions;

(F) Stand-alone TDD units [~~as applicable~~]; and

(G) Any other equipment essential to the 9-1-1 call-taking function.

(8) [~~(9)~~] A published ten-digit emergency telephone number that can accept emergency calls 24 hours a day, 7 days a week, 365 days a year and which is answered by a qualified 9-1-1 call taker;

(9) [~~(10)~~] A positive response to each 9-1-1 call to include an audible ringing tone connecting to a PSAP where either the call is answered by personnel at the PSAP or a recorded announcement provides further information; and

(10) [~~(11)~~] The following required elements to ensure the reliability of the 9-1-1 equipment and service:

(A) Contingency routing plan;

(B) Network testing plan;

(C) Local monitoring plan;

(D) Capital asset plan;

(E) Network diagrams;

(F) Database maintenance plan; and

(G) Equipment maintenance plan.

(g) (No change.)

(h) Call Taking Positions. Requests for an increase in the number of positions within a PSAP should be submitted for approval with submission of [~~in~~] the regional strategic plan [~~along with justification for the increase~~]. If an increase in the number of positions is required after the regional plan has been approved [~~and the addition of the position(s) will require no additional funding~~], the RPC shall comply with Commission rules, policies and procedures. [~~follow the requirements for amendment in accordance with Commission Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation. If additional funding is required for the additional position(s), the request shall be submitted to the Commission for consideration and approval in accordance with Commission Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation. No amendment request is necessary when increased call taking positions to a PSAP or PSAPs do not increase the total number of call taking positions within the region. Each PSAP shall be equipped with adequate call taking positions to meet anticipated call volume. Factors that may be considered in determining the proper number of positions include:~~]

[~~(1) Historical 9-1-1 call volume and growth;~~]

[~~(2) Call duration information;~~]

[~~(3) Anticipated area population growth; and~~]

[~~(4) Peak 9-1-1 call volume patterns.~~]

(i) Adding a PSAP. Should there be a need to add a new PSAP within the region, the RPC shall follow the requirements for amendments in accordance with Commission Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation. The amendment request shall comply with Commission rules, policies and procedures. [~~provide the Commission written justification supporting the request. Appropriate justification shall include statistical information such as call volume and growth rates, or jurisdictional changes within the region. All requests for a new PSAP must include specific costs for equipment and services, as well as a complete written description and schematic illustrating the relationship of the proposed PSAP to the balance of the region's network. These requirements apply to the addition of a remote or mobile PSAP, as well as, Primary and Secondary PSAPs.~~]

[~~(j) Mobile PSAP Procedures. When a RPC is approved to add a mobile PSAP, they must submit a Standard Operating Procedure (SOP) for that PSAP that includes, at a minimum:~~]

[~~(1) Designation of responsible local agency;~~]

[~~(2) Proposed hours of operation;~~]

[~~(3) Primary location of operation;~~]

[~~(4) Procedure for notification of relocation of PSAP;~~]

[~~(5) Asset management plan or insurance coverage to safeguard the equipment;~~]

[~~(6) Security plan for control of the equipment and data;~~]

[~~(7) Revised Interlocal Agreement to include the mobile PSAP; and~~]

[~~(8) Plan for equipment disposal upon termination of the use of the mobile PSAP.~~]

(j) [~~(k)~~] Contracts. The RPC shall execute interlocal agreements between itself and its local governments responsible for PSAPs relating to the planning, development, operation and provision of 9-1-1 service, the use of 9-1-1 funds and adherence to applicable law in accordance with Commission Rule 251.12, Contracts for 9-1-1 Services.

(k) [~~(l)~~] Procurement. The RPC shall use competitive procurement practices and procedures similar to those required by state law for cities or counties, as well as any additional Commission policies, in conjunction with the procurement of 9-1-1 Customer Premises Equipment, 9-1-1 Network, and 9-1-1 Database Services, and any other items to be obtained with 9-1-1 funds in accordance with Commission Rule 251.8, Guidelines for the Procurement of Equipment and Services with 9-1-1 funds.

(l) [~~(m)~~] Equipment Management. The RPC is responsible for the 9-1-1 equipment in accordance with Commission Rule 251.5, Guidelines for 9-1-1 Equipment Management and Disposition. Any integration of expanded third-party applications onto a call taking position must be in accordance with Commission Rule 251.7, Guidelines for Implementing Integrated Service. If changes or extensions of 9-1-1 service occur, the RPC is to administer and report them in accordance with Commission Rule 251.2, Guidelines for Changing or Extending 9-1-1 Service Arrangements.

(m) [~~(n)~~] Testing. The RPC shall test all 9-1-1 Customer Premises Equipment (including TDD/TTY), 9-1-1 Network, and 9-1-1 Database services. Testing shall occur when new service or equipment is installed, service or equipment is modified, and on a regular basis to ensure system reliability and compliance with ADA. A schedule for ongoing testing shall be developed by the RPC and shall be available to the Commission for monitoring.

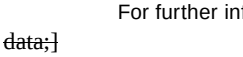
(n) [~~(o)~~] Monitoring. The Commission reserves the right to perform on-site monitoring of the RPC and/or its performing local governments or PSAPs, including mobile PSAPs, for compliance with applicable law in accordance with Commission Rule 251.11, Monitoring Policies and Procedures.

(o) [~~(p)~~] Performance Reporting. A RPC shall submit financial and performance reports to the Commission at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, strategic plan priority level, and component. The performance report shall reflect the progress of implementing the region's strategic plan including, but not limited to, the status of equipment, services, and program deliverables in a format to be determined by the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503016
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 305-6933



CHAPTER 254 POISON CONTROL CENTERS

1 TAC §254.1

The Commission on State Emergency Communications (CSEC) proposes new Chapter 254, §254.1, concerning operations and funding of Poison Control Centers.

Health and Safety Code, Chapter 777, §777.001(b) and §777.009(b) require that CSEC jointly adopt rules regarding Poison Control Centers with the Department of State Health Services (DSHS). DSHS has repealed and replaced its rules regarding the poison control center network (25 Texas Administrative Code §5.51 and §5.52). As required by statute, CSEC must post and adopt its own rule to mirror the intent and language of the DSHS rules.

Paul Mallett, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Mallett has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of this section will be increased clarity and ease of understanding the rules. No historical data is available, however, there appears to be no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The new section is proposed under Health and Safety Code, Chapter 777, §777.001(b) and §777.009(b), which require that CSEC jointly adopt rules regarding Poison Control Centers with DSHS.

No other statutes, articles or codes are affected by the proposed new section.

§254.1. Operations and Funding of Poison Control Centers.

(a) Purpose. Health and Safety Code, Chapter 777, and 25 TAC §5.51, provide the Department of State Health Services (Department) and the Commission on State Emergency Communications (Commission) with the authority to establish a program to award grants to fund a network of regional poison control centers.

(b) Background. The Commission and the Department shall adopt a statewide telecommunications network plan. The plan may establish phased implementation of the network. The plan shall consider the following:

(1) uniform statewide 800-service availability for community and professional access for poison information and referral;

(2) direct access from Public Safety Answering Points to Poison Control Answering Points for emergency calls; and

(3) other features as appropriate and identified by this section.

(c) As required by Health and Safety Code, §777.001, the Texas Health and Human Services (HHS) regions shall define the service areas for the Poison Control Answering Points, except where telecommunications network design would greatly increase the cost of routing the system. The regions are as follows:

(1) The University of Texas Medical Branch at Galveston--HHS Regions 5 and 6;

(2) The Dallas County Hospital District/North Texas Poison Center--HHS Regions 3 and 4;

(3) The University of Texas Health Science Center at San Antonio--HHS Regions 8 and 11;

(4) R.E. Thomason General Hospital, El Paso County Hospital District--HHS Regions 9 and 10;

(5) Northwest Texas Hospital, Amarillo Hospital District--HHS Regions 1 and 2; and

(6) Scott and White Memorial Hospital, Temple--HHS Region 7.

(d) Eligibility for funding.

(1) The entities eligible to request funding are the regional poison control centers for the state, designated under the Health and Safety Code, Chapter 777, as follows:

(A) University of Texas Medical Branch at Galveston;

(B) Dallas County Hospital District/North Texas Poison Center;

(C) University of Texas Health Science Center at San Antonio;

(D) R.E. Thomason General Hospital, El Paso County Hospital District;

(E) Northwest Texas Hospital, Amarillo Hospital District; and

(F) Scott and White Memorial Hospital, Temple.

(2) In accordance with Health and Safety Code, §777.009, and 25 TAC §5.52, each poison control center must be certified by the American Association of Poison Control Centers (AAPCC) until a statewide system certification is achieved. The Commission and Department shall work together with the AAPCC to certify the statewide poison control network and/or individual centers as required.

(e) Funding criteria. As required by 25 TAC §5.52, applicants must meet all of the goals and objectives outlined in the annual Request for Proposals, including:

(1) the need of the region based on population served for poison control services, and the extent to which the grant would meet the identified need;

(2) a four-year strategic plan assuring provision of quality service;

(3) a demonstration that the Poison Control Answering Point is working toward achieving and/or maintaining certification as a poison control center with the AAPCC; and

(4) the availability of other funding sources; the maintenance of effort; and the development or existence of telecommunications systems.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503015
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 305-6933

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.4

The Texas Health and Human Services Commission (HHSC) proposes new §353.4, detailing Medicaid managed care organizations requirements related to out-of-network providers.

Background and Justification

House Bill 2292, 78th Legislature, Regular Session, 2003, mandates that a managed care organization (MCO) that contracts with HHSC in the STAR or STAR+PLUS programs is subject to certain requirements involving out-of-network providers. Those requirements include network adequacy, appropriate payment rates for out-of-network services received by a Medicaid managed care member, and appropriate limits on the MCO's usage of out-of-network providers. The bill addresses provider complaints to HHSC regarding reimbursement for, or overuse of, out-of-network services and the time frame for HHSC to respond to those complaints. House Bill 2292 also requires HHSC to initiate a corrective action plan if an MCO does not meet the requirements related to reimbursement or network adequacy. The MCO is required to submit a report to HHSC with information regarding number, type, and scope of services provided by out-of-network providers.

To facilitate a better understanding of the practices and concerns associated with the issues addressed by House Bill 2292, HHSC commissioned The Lewin Group to conduct a study of out-of-network reimbursement and related policies. In its study, The Lewin Group conducted interviews with HHSC staff, provider associations, hospital providers, and Medicaid managed care contracted health plans. It also researched the experience of other states. From its findings, The Lewin Group made a number of policy recommendations to HHSC regarding out-of-network services.

HHSC also solicited stakeholder input concerning The Lewin Group's recommendations and how best to implement the mandates of House Bill 2292. Stakeholders from both the provider community and the managed care industry reviewed drafts of the proposed rule and provided comments and recommendations.

Using the mandates of House Bill 2292, findings and recommendations from The Lewin Group report, as well as input from stakeholders, HHSC developed the proposed rule concerning the responsibilities of Medicaid MCOs in the STAR and STAR+PLUS programs when one of their members receives services from an out-of-network provider as well as HHSC's oversight of those MCO responsibilities.

The rule mandates that Medicaid MCOs have an adequate network to meet the needs of their members and that they allow referrals to out-of-network providers under certain circumstances. The rule requires an MCO to reimburse out-of-area out-of-network and in-area out-of-network provider at a reasonable rate, which is established by the rule. Each MCO must provide information quarterly to HHSC related to services delivered by out-of-network providers. Using these reports and standards established in the proposed rule HHSC will determine if MCO member utilization of out-of-network providers is appropriate. If HHSC determines the MCO member utilization to be excessive, the rule describes the consequences for the MCO, including an increase in the reimbursement payable to out-of-network providers for specified timeframes. HHSC will accept and investigate complaints by providers related to out-of-network reimbursement or usage. If HHSC finds a complaint to be valid, HHSC must implement a corrective action plan and seek appropriate reimbursement from the MCO. The rule describes the circumstances and the contents of a corrective action plan.

Section-by-Section Summary

Subsection (a) of the rule identifies HHSC as the state agency with oversight for the Medicaid managed care program and confirms the responsibility of the participating managed care organizations (MCOs) to offer a provider network that meets the needs of their members. Subsection (b) outlines the steps for an appropriate referral to an out-of-network provider, use of out-of-network emergency services, and member access to other out-of-network services that may be necessary in other circumstances.

Subsection (c) describes the methodology used to determine the amount of reimbursement paid by an MCO for out-of-network services. Subsection (d) describes the timing and content of quarterly financial statistical reports to HHSC from MCOs. Subsection (e) concerns MCO member utilization of out-of-network services, including the standards by which excessive utilization will be determined and the special circumstances taken into consideration by HHSC in calculating an MCO's out-of-network utilization.

The provider complaint process is covered in subsection (f), including the timeframes for HHSC's response and for any action required from the MCO if HHSC determines that the complaint is valid. Subsection (g) describes when a corrective action plan will be required for an MCO, what the plan will require, and what actions are taken either by HHSC or the MCO as a result of the need for a corrective action plan.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be a fiscal impact of $3.2 million in additional costs to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Deputy Director of Health Plan Operations, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption and enforcement of the section. The anticipated public benefit will be improved health plan networks for Medicaid MCO members as well as increased provider access and choice for those members.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the

specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code. No takings impact assessment is required.

Public Comment

Written comments on the proposal may be submitted to Lesa Ledbetter, at Health and Human Services, P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to lesa.ledbetter@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 17, 2005 from 3:00 PM to 4:00 PM (central time) in the public hearing room of the Texas Health and Human Services Commission, 11209 Metric Boulevard, Building H, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§353.4. Requirements of STAR and STAR+PLUS Programs Concerning Out-of-Network Providers.

(a) Network adequacy. The Health and Human Services Commission (HHSC) is the state agency responsible for overseeing and monitoring the Medicaid managed care program. The managed care organizations (MCOs) participating in the Medicaid managed care program must offer a network of providers that is sufficient to meet the needs of the Medicaid population who are MCO members. HHSC will monitor MCO members' access to an adequate provider network through reports from the MCOs and complaints received from providers and members. The reporting requirements are discussed in subsection (d) of this section.

(b) MCO requirements concerning treatment of members by out-of-network providers.

(1) The MCO shall allow referral of its member(s) to an out-of-network provider, shall timely issue the proper authorization for such referral, and shall timely reimburse the out-of-network provider for authorized services provided when:

(A) Medicaid covered services are medically necessary and these services are not available through an in-network provider;

(B) A provider currently providing authorized services to the member requests authorization for such services to be provided to the member by an out-of-network provider; and

(C) The authorized services are provided within the time period specified in the MCO's authorization. If the services are not provided within the required time period, a new request for referral from the requesting provider must be submitted to the MCO prior to the provision of services.

(2) An MCO may not refuse to reimburse an out-of-network provider for emergency or post-stabilization services provided as a result of the MCO's failure to arrange for and authorize a timely transfer of a member.

(3) MCO requirements concerning emergency services.

(A) The MCO shall allow its members to be treated by any emergency services provider for emergency services and/or for services to determine if an emergency condition exists.

(B) The MCO is prohibited from requiring an authorization for emergency services or for services to determine if an emergency condition exists.

(4) MCOs may be required by contract with HHSC to allow members to obtain services from out-of-network providers in circumstances other than those described in paragraphs (1) - (3) of this subsection.

(c) Reasonable Reimbursement Methodology

(1) The MCO shall reimburse an out-of-network, in area service provider no less than the prevailing Medicaid Fee-For-Service (FFS) rate less 3 percent. The Medicaid Fee-For-Service rates are defined as those rates for providers of services in the Texas Medicaid Program for which reimbursement methodologies are specified in Chapter 355 of this title, exclusive of the rates and payment structures in Medicaid Managed Care.

(2) The MCO shall reimburse an out-of-network, out-of-area service provider at no less than 100 percent of the Medicaid Fee-For-Service rate.

(3) In accordance with §533.005(a)(12) and (b) of the Government Code, all post stabilization services provided to a member by an out-of-network provider must be reimbursed by the MCO at the rates for providers of services in the Texas Medicaid Program for which reimbursement methodologies are specified in Chapter 355 of this title, until the MCO arranges for the timely transfer of the member, as determined by the member's attending physician, to a provider in the MCO's network.

(d) Reporting requirements

(1) Each MCO that contracts with HHSC to provide health care services to members in a health care service region must submit quarterly information in its financial statistical report to HHSC. Each MCO must provide its financial statistical report to HHSC by the 30th calendar day of the month following the end of each quarter.

(2) Each financial statistical report submitted by an MCO must contain information about members enrolled in each HHSC Medicaid managed care program provided by the MCO. The report shall include the following information:

(A) The types of services provided by out-of-network providers for members of the MCO's Medicaid managed care plan.

(B) The scope of services provided by out-of-network providers to members of the MCO's Medicaid managed care plan.

(C) Total number of hospital admissions, as well as number of admissions that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(D) Total number of emergency room visits, as well as total number of emergency room visits that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(E) Total dollars billed for other outpatient services, as well as total dollars billed by out-of-network providers for other outpatient services.

(F) Any additional information required by HHSC.

(3) HHSC will determine the specific form of the report described above and will include the report form as part of the Medicaid managed care contract between HHSC and the MCOs.

(e) Utilization

(1) Upon review of the reports described in subsection (d) of this section that are submitted to HHSC by the MCOs, HHSC may determine that an MCO exceeded maximum Out-of-Network usage standards set by HHSC for out-of-network access to health care services during the reporting period.

(2) Out-of-Network Usage Standards

(A) Inpatient Admissions: No more than 25 percent of an MCO's total hospital admissions, by service delivery area, may occur in out-of-network facilities.

(B) Emergency Room Visits: No more than 30 percent of an MCO's total emergency room visits, by service delivery area, may occur in out-of-network facilities.

(C) Other Outpatient Services: No more than 30 percent of total dollars billed to an MCO for "other outpatient services" may be billed by out-of-network providers.

(3) Special Considerations in Calculating MCO Out-of-Network Usage of Inpatient Admissions and Emergency Room Visits.

(A) In the event that an MCO exceeds the maximum Out-of-Network usage standard set by HHSC for Inpatient Admissions or Emergency Room Visits, HHSC may modify the calculation of that MCO's Out-of-Network usage for that standard if:

(i) The admissions or visits to a single out-of-network facility account for 25% or more of the MCO's admissions or visits in a reporting period; and

(ii) HHSC determines that the MCO has made all reasonable efforts to contract with that out-of-network facility as a network provider without success.

(B) In determining whether the MCO has made all reasonable efforts to contract with the single out-of-network facility described above in subparagraph (A) of this paragraph, HHSC will consider at least the following information:

(i) How long the MCO has been trying to negotiate a contract with the out-of-network facility;

(ii) The in-network payment rates the MCO has offered to the out-of-network facility;

(iii) The other, non-financial contractual terms the MCO has offered to the out-of-network facility, particularly those relating to prior authorization and other utilization management policies and procedures;

(iv) The MCO's history with respect to claims payment timeliness, overturned claims denials, and provider complaints;

(v) The MCO's solvency status; and

(vi) The out-of-network facility's reasons for not contracting with the MCO.

(C) If the conditions described in subparagraph (A) of this paragraph are met, HHSC may modify the calculation of the MCO's Out-of-Network usage for the relevant reporting period and standard by excluding from the calculation the Inpatient Admissions or Emergency Room Visits to that single out-of-network facility.

(f) Provider Complaints.

(1) HHSC will accept provider complaints regarding reimbursement for or overuse of out-of-network providers and will conduct investigations into any such complaints.

(2) When a provider files a complaint regarding out-of-network payment, HHSC will require the relevant MCO to submit data to support its position on the adequacy of the payment to the provider. The data will include at a minimum a copy of the claim for services rendered and an explanation of the amount paid and of any amounts denied.

(3) Not later than the 60th day after HHSC receives a provider complaint, HHSC shall notify the provider who initiated the complaint of the conclusions of HHSC's investigation regarding the complaint. The notification to the complaining provider will include:

(A) A description of the corrective actions, if any, required of the MCO in order to resolve the complaint; and

(B) If applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network provider.

(4) If HHSC determines through investigation that an MCO did not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described within subsection (c) of this section, HHSC shall initiate a corrective action plan. Refer to subsection (g) of this section for information about the contents of the corrective action plan.

(5) If, after an investigation, HHSC determines that additional reimbursement is owed to an out-of-network provider, the MCO must:

(A) Pay the additional reimbursement owed to the out-of-network provider within 90 days from the date the complaint was received by HHSC or 30 days from the date the clean claim, or information required that makes the claim clean, is received by the MCO, whichever comes first; or,

(B) Submit a reimbursement payment plan to the out-of-network provider within 90 days from the date the complaint was received by HHSC. The reimbursement payment plan provided by the MCO must provide for the entire amount of the additional reimbursement to be paid within 120 days from the date the complaint was received by HHSC.

(6) If the MCO does not pay the entire amount of the additional reimbursement within 90 days from the date the complaint was received by HHSC, HHSC may require the MCO to pay interest on the unpaid amount. If required by HHSC, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the 90th

day after the date the complaint was received by HHSC, until the date the entire amount of the additional reimbursement is paid.

(7) HHSC will pursue any appropriate remedy authorized in the contract between the MCO and HHSC if the MCO fails to comply with a corrective action plan under subsection (g) of this section.

(g) Corrective Action Plan.

(1) A corrective action plan is required by HHSC in the following situations:

(A) The MCO exceeds a maximum standard established by HHSC for out-of-network access to health care services described in subsection (e) of this section; or

(B) The MCO does not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described within subsection (c) of this section.

(2) A corrective action plan imposed by HHSC will require one of the following:

(A) Reimbursements by the MCO to out-of-network providers at rates that equal the allowable rates for the health care services as determined under §32.028 and §32.0281, Human Resources Code, for all health care services provided during the period:

(i) the MCO is not in compliance with a utilization standard established by HHSC; or

(ii) the MCO is not reimbursing out-of-network providers based on a reasonable reimbursement methodology, as described in subsection (c) of this section.

(B) Initiation of an immediate freeze by HHSC on the enrollment of additional recipients in the MCO's managed care plan until HHSC determines that the provider network under the managed care plan can adequately meet the needs of the additional recipients;

(C) Education by the MCO of recipients enrolled in the managed care plan regarding the proper use of the provider network under the health care plan; or

(D) Any other actions HHSC determines are necessary to ensure that Medicaid recipients enrolled in managed care plans provided by the MCO have access to appropriate health care services and that providers are properly reimbursed by the MCO for providing medically necessary health care services to those recipients.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 21, 2005.

TRD-200502978
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8063

The Texas Health and Human Services (HHSC) proposes to amend §355.8063, Reimbursement Methodology for Inpatient Hospital Services in its Medicaid Reimbursement Rates chapter.

Background and Justification

The proposed amendment to §355.8063 removes obsolete language including replacing the term "department" with HHSC or the commission. Consistent with the amounts appropriated to the Texas Medicaid Program, the proposed amendment also extends the two provisions that would otherwise expire on August 31, 2005 to August 31, 2007. The first provision, contained in subsection (h), explains the time period during which HHSC will not rebase or recalculate the standard dollar amount (SDA) for each payment division. The second provision, contained in subsection (n)(2), explains the time period during which HHSC will not apply a cost of living index to the SDA. Finally, the proposed amendment increases the limit on the amount of high volume payments as explained in subsection (u).

Section-by-Section Summary

Subsection (a) deletes reference to the budgetary reduction factor and references dates.

Subsection (a) paragraph (7) removes sentence with reference to 1985 fiscal year.

Subsection (h) extends the period HHSC will not rebase or recalculate the standard dollar amount (SDA) for each payment division from September 1, 2003 through August 31, 2007.

Subsection (j) paragraph (1) subparagraph (A) removes reference to the Texas Board of Health.

Subsection (n) paragraph (1) removes sentence beginning with 1985 and the reference regarding beginning September 1, 1988.

Subsection (n) paragraph (1) removes subparagraph (C) and paragraph (2) extends the period during which HHSC will not apply the cost-of-living index to the SDA for admissions during the period September 1, 2003 through August 31, 2007.

Subsection (n) paragraph (2) subparagraph (A) removes reference to HCFA and replaced with CMS.

Subsection (r) removes reference regarding SY 1990.

Subsection (u) removes language describing availability of funds including paragraphs (1) and (2).

Subsection (u) starts with language contained in paragraph (3) High-volume payments.

Also, in subsection (u) High-volume payments; limits the high-volume payments to $26,400,000 for eligible providers.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Suehs has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be to maintain cost-effective reimbursement for hospital inpatient services within appropriated funds for the 2006-2007 biennium.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Arnulfo Gomez, at HHSC (H-600), P.O. Box 85200-5200, Austin, Texas by fax to (512) 491-1953, or by e-mail to arnulfo.gomez@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 30, 2005 at 1:00 p.m. in the Lone Star Room of Building H, Health and Human Services Commission, 11209 Metric Blvd., Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

To comply with federal regulations, a copy of the proposal is being sent to each Department of Aging and Disability Services office where it will be available for public review upon request.

Statutory Authority (Medicaid)

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements).

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8063. Reimbursement Methodology for Inpatient Hospital Services.

(a) Introduction. Except as otherwise specified in subsection (q) of this section, the Texas Medical Assistance Program (Medicaid) reimburses hospitals, except in-state children's hospitals, for covered inpatient hospital services using a prospective payment system. In-state children's hospitals are reimbursed for covered inpatient hospital services using the methodology described in subsection (o) of this section. For hospitals other than in-state children's hospitals, the Health and Human Services Commission (HHSC) [~~department~~] or its designee groups hospitals into payment divisions using the average base year payment per case in each hospital after adjusting each hospital's base year payment per case by a case mix index[~~,~~] and a cost-of-living index[~~, and a budgetary reduction factor of 10%. The budgetary reduction factor for admissions occurring in state fiscal year 1990 (September 1, 1989, through August 31, 1990) is 7.0% and the budgetary reduction factor for admissions occurring in state fiscal year 1991 (September 1, 1990, through August 31, 1991) is 5.5%. For admissions occurring in state fiscal year 1992 (September 1, 1991, through August 31, 1992) and subsequent state fiscal years, a budgetary reduction factor is not applied~~]. The payment divisions are separated into $100 increments. If a payment division has less than ten observations for Medicaid data, the HHSC [~~department~~] or its designee considers that payment division to be statistically invalid. Hospitals within that payment division are placed into the nearest valid payment division.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Diagnosis-related group (DRG)--The taxonomy of diagnoses as defined in the Medicare DRG system or as otherwise specified by the HHSC [~~department~~] or its designee.

(2) Case mix index--The hospital-specific average relative weight.

(3) Relative weight--The arithmetic mean of the dollars for a specific DRG divided by the arithmetic mean of the dollars for all cases.

(4) Standard dollar amount--The weighted mean base year payment for all hospitals in a payment division after adjusting each hospital's base year payment per case by a case mix index, and a cost-of-living index[~~, and a budgetary reduction factor of 10%. The budgetary reduction factor for admissions occurring in state fiscal year 1990 (September 1, 1989, through August 31, 1990) is 7.0% and the budgetary reduction factor for admissions occurring in state fiscal year 1991 (September 1, 1990, through August 31, 1991) is 5.5%. For admissions occurring in state fiscal year 1992 (September 1, 1991, through August 31, 1992) and subsequent state fiscal years, a budgetary reduction factor is not applied~~]. The HHSC [~~department~~] or its designee establishes a minimum standard dollar amount of $1,600 and applies it to those hospitals whose standard dollar amount is less than the minimum. The HHSC [~~department~~] or its designee applies cost-of-living indexes to the standard dollar amounts established for the base year to calculate standard dollar amounts for prospective years. A cost-of-living index is not applied to the minimum standard dollar amount.

(5) Base year--A 12-consecutive-month period of claims data selected by the HHSC [~~department~~] or its designee as the basis for establishing the payment divisions, standard dollar amounts, and relative weights. The HHSC [~~department~~] or its designee selects a new base year at least every three years.

(6) Base year payment per case--The payment that would have been made to a hospital if the HHSC [~~department~~] or its designee

reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. In calculating the base year payment per case, the HHSC [~~department~~] or its designee uses the interim rate established at tentative or final settlement, if applicable, of the most recent cost reporting period up to and including the cost reporting period associated with the base year.

(7) Interim rate--Total reimbursable Title XIX inpatient costs, as specified in paragraph (6) of this subsection, divided by total covered Title XIX inpatient charges per tentative or final cost reporting period. [~~Beginning with 1985 hospital fiscal year cost reporting periods,~~] The [~~the~~] interim rate established at tentative settlement includes incentive/penalty payments to the extent that they continue to be permitted by federal law and regulation and continue to be included on Title XVIII cost reports.

(8) New hospital--A facility that has been in operation under present and previous ownership for less than three years and that initially enrolls as a Title XIX provider after the current base year. A new hospital must have been substantially constructed within the five previous years from the effective date of the prospective rate period.

(9) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(10) Out-of-state children's hospital--A hospital outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(c) Calculating relative weights and standard dollar amounts. The HHSC [~~department~~] or its designee uses recent Texas claims data to calculate both the relative weights and standard dollar amounts. A relative weight is calculated for each DRG and applied to all payment divisions. A separate standard dollar amount is calculated for each payment division. Except for border hospitals with a Texas Medicaid provider number beginning with an H and out-of-state children's hospitals, the HHSC [~~department~~] or its designee uses the overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, as the standard dollar amount to reimburse out-of-state hospitals. The overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, is also used as the standard dollar amount to reimburse military hospitals providing inpatient emergency services for admissions on or after October 1, 1993. The calculation of the standard dollar amount for out-of-state children's hospitals is described in subsection (r) of this section. Except for new hospitals, the overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, is also used as the standard dollar amount to reimburse hospitals that initially enroll as a Title XIX provider after the current base year. The standard dollar amount for new hospitals is the lesser of the overall arithmetic mean base year payment per case plus three percentile points, including the cost of living update as specified in subsection (n) of this section, or the hospital's average Medicaid cost per Medicaid discharge based on the tentative or final settlement, if applicable, of the hospital's first 12-month cost reporting period occurring after the hospital's enrollment as a Title XIX provider. In the event that the new hospital is a replacement facility for a hospital that is currently enrolled as a Title XIX provider, the hospital is reimbursed by using either the standard dollar amount of the existing provider or the standard dollar amount for new hospitals, whichever is greater. The use of the hospital's average Medicaid cost per Medicaid discharge, after adjusting for case-mix intensity, as its standard dollar amount is applied prospectively to the beginning of the next prospective year and is applicable only if the tentative or final settlement is completed and available at least 60 days before the beginning of the prospective year. The hospital's Medicaid costs are determined using similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. When two or more Title XIX participating providers merge, the HHSC [~~department~~] or its designee combines the Medicaid inpatient costs, as described in this subsection, of each of the individual providers to calculate a standard dollar amount, effective at the start of the next prospective period, to be used to reimburse the merged entity. Acquisitions and buyouts do not result in a recalculation of the standard dollar amount of the acquired provider unless acquisitions or buyouts result in the purchased or acquired hospital becoming part of another Medicaid participating provider. When the HHSC [~~department~~] or its designee determines that the HHSC [~~department~~] or its designee has made an error that, if corrected, would result in the standard dollar amount of the provider for which the error was made changing to a new payment division, either higher or lower, the HHSC [~~department~~] or its designee moves the provider into the correct payment division, and the HHSC [~~department~~] or its designee reprocesses claims paid using the initial, incorrect standard dollar amount that was in effect for the current state fiscal year by using the existing standard dollar amount of the payment division in which the provider was moved. In the determination of the corrected payment division, the HHSC [~~department~~] or its designee uses the relative weights that are currently in effect for the state fiscal year. The correction of this error condition only applies to the current state fiscal year payments. No corrections are made to payment rates for services provided in previous state fiscal years. If a specific DRG has less than ten observations for Medicaid data, the HHSC [~~department~~] or its designee uses the corresponding Medicare relative weight, except for DRGs relating to organ transplants. Relative weights for organ transplant DRGs with less than ten observations may be developed using Medicaid-specific data. The relative weights include organ procurement costs for both solid and nonsolid organs. The HHSC [~~department~~] or its designee makes no distinction between urban and rural hospitals and there is no federal/national portion within the payment.

(d) Add-on payments. There are no separate add-on payments. The HHSC [~~department~~] or its designee:

(1) includes capital costs in the standard dollar amount for each payment division;

(2) includes the cost of indirect medical education in the standard dollar amount for each payment division;

(3) includes the cost of malpractice insurance in the standard dollar amount for each payment division; and

(4) includes return on equity in the standard dollar amount for each payment division.

(e) Calculating the payment amount. The HHSC [~~department~~] or its designee reimburses each hospital for covered inpatient hospital services by multiplying the standard dollar amount established for the hospital's payment division by the appropriate relative weight. The patient's DRG classification is primarily based on the patient's principal diagnosis. The resulting amount is the payment amount to the hospital.

(f) Patient transfers. If a patient is transferred, the HHSC [~~department~~]or its designee establishes payment amounts as specified in paragraphs (1) - (4) of this subsection. If appropriate, the HHSC [~~department~~] or its designee manually reviews transfers for medical necessity and appropriate payment.

(1) If the patient is transferred to a skilled nursing facility or intermediate care facility, the HHSC [~~department~~] or its designee pays the transferring hospital the total payment amount of the patient's DRG.

(2) If the patient is transferred to another hospital, the HHSC [~~department~~] or its designee pays the receiving hospital the total payment amount of the patient's DRG. The HHSC [~~department~~] or its designee pays the transferring hospital a DRG per diem. The DRG per diem is based on the following formula: (DRG relative weight x standard dollar amount)/DRG mean length of stay (LOS) x LOS. The LOS is the lesser of the DRG mean LOS, the claim LOS, or 30 days. The 30-day factor is not used in establishing a DRG per diem amount for a medically necessary stay of a recipient less than age one in a Title XIX participating hospital or a recipient less than age six in a disproportionate share hospital as defined by the HHSC [~~department~~].

(3) If the HHSC [~~department~~] or its designee determines that the transferring hospital provided a greater amount of care than the receiving hospital, the HHSC [~~department~~] or its designee reverses the payment amounts. The transferring hospital is paid the total payment amount of the patient's DRG and the receiving hospital is paid the DRG per diem.

(4) The HHSC [~~department~~] or its designee makes multiple transfer payments by applying the per diem formula to the transferring hospitals and the total DRG payment amount to the discharging hospital.

(g) Split billing. The HHSC [~~department~~] or its designee does not allow interim billings by providers. The hospital may bill the HHSC [~~department~~] or its designee when the patient exceeds his 30-day inpatient hospital limit or is discharged. The HHSC [~~department~~] or its designee bases payment on the diagnosis codes known at billing. The payment is final.

(h) Rebasing the standard dollar amounts. The HHSC or its designee rebases the standard dollar amount for each payment division at least every three years. HHSC will not rebase or recalculate the standard dollar amounts for each payment division for admissions during the period September 1, 2003 through August 31, 2007 [~~2005~~]. The relative weights are recalibrated whenever the standard dollar amounts are recalculated. The standard dollar amounts are not rebased on an interim basis unless the HHSC or its designee determines that special circumstances warrant rebasing.

(i) Recalibrating the relative weights. The HHSC [~~department~~] or its designee recalibrates the relative weights whenever the standard dollar amounts are rebased.

(j) Revising the diagnosis related groups. The HHSC [~~department~~] or its designee parallels the taxonomy of diagnoses as defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors as determined by the HHSC [~~department~~] or its designee.

(k) Appeals.

(1) A hospital may appeal individual claims as specified in other HHSC [~~department~~] rules. As specified in subparagraphs (A) - (C) of this paragraph, a hospital may also appeal mechanical, mathematical, and data entry errors in base year claims data and incorrectly computed subsequent adjustments to the hospital's base year claims data because of the base year's tentative or final settlement.

(A) If a hospital believes that the HHSC [~~department~~] or its designee made a mechanical, mathematical, or data entry error in computing the hospital's base year claims data, the hospital may request a review of the disputed calculation by the HHSC [~~department~~] or, at the HHSC [~~department's~~] direction, its designee. A hospital may not request a review if the disputed calculation is the result of the hospital's submittal of incorrect data or the result of the HHSC [~~department's~~] or its designee's application of an interim rate to the base year claims data derived from a cost reporting period occurring before the base year. Upon the provider hospital's request, the HHSC [~~department~~] or its designee provides the applicable available data used in calculating the hospital's base year claims data to the provider hospital. The hospital must submit a specific written request for review and appropriate specific documentation supporting its contention that there has been a mechanical, mathematical, or data entry error to the HHSC [~~department~~] or its designee. Except as specified in subparagraph (C) of this paragraph, the request must be submitted within 60 days after the hospital receives initial notification of its payment division and standard dollar amount. The HHSC [~~department~~] or its designee conducts the review as quickly as possible and notifies the hospital of the results. If the hospital is dissatisfied with the results of the review, the hospital may request a formal hearing under the procedures, including the expedited processing provisions, [~~contained in Chapter 1 of this title (relating to the Texas Board of Health),~~] except that, in the event of any conflict, the procedures contained in this section apply. Except as specified in subparagraph (C) of this paragraph, if the review or appeal is completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied to that next prospective year. If the review or appeal is not completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year. The base year claims data used by the HHSC [~~department~~] or its designee pending the review or appeal is the base year claims data established by the HHSC [~~department~~] or its designee.

(B) If a hospital believes that the HHSC [~~department~~] or its designee incorrectly computed subsequent adjustments to the hospital's base year claims data because of the base year's tentative or final settlement, the hospital may request a review of the disputed calculation related to the tentative or final settlement by the HHSC [~~department~~] or, at the HHSC [~~department's~~] direction, its designee. The hospital's request may also include a request to review the tentative or final settlement. The hospital must submit a specific written request for review and appropriate specific documentation supporting its contention that the tentative or final settlement is incorrect to the HHSC [~~department~~] or its designee. Except as specified in subparagraph (C) of this paragraph, the request must be submitted within 60 days after the hospital receives notification of a tentative or final settlement of the base year data. The HHSC [~~department~~] or its designee conducts the review as quickly as possible and notifies the hospital of the results. If the hospital is dissatisfied with the results of the review, the hospital may request a formal hearing under the procedures, including the expedited processing provisions, contained in Chapter 1 of this title (relating to the Texas Board of Health), except that, in the event of any conflict, the procedures contained in this section apply. Except as specified in subparagraph (C) of this paragraph, if the review or appeal is completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied to that next prospective year. If the review or appeal is not completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year. The interim rate applied to the base year claims data pending the review or appeal is the interim rate established by the HHSC [~~department~~] or its designee.

(C) If a hospital believes that the HHSC [~~department~~] or its designee incorrectly computed the hospital's 1985 base year claims data as specified in subparagraph (A) of this paragraph, the hospital may submit a specific written request for review and appropriate specific documentation supporting its contention within 60 days after the effective date of this section. If a hospital believes that the HHSC [~~department~~] or its designee incorrectly computed the tentative or final settlement of the cost reporting period associated with the 1985 base

year as specified in subparagraph (B) of this paragraph, the hospital may submit a specific written request for review and appropriate specific documentation supporting its contention within 60 days after the effective date of this section. The hospital must follow the process described in subparagraph (A) or (B) of this paragraph, as appropriate. If the review or appeal is completed by December 31, 1987, any adjustment required after the completion of the review or appeal is applied to the March 1, 1988, adjustment described in subsection (n) of this section. If the review or appeal is not completed by December 31, 1987, any adjustment required after the completion of the review or appeal is applied to the next prospective year.

(2) A hospital may not appeal the prospective payment methodology used by the HHSC [~~department~~] or its designee, including:

(A) the payment division methodologies;

(B) the DRGs established;

(C) the methodology for classifying hospital discharges within the DRGs;

(D) the relative weights assigned to the DRGs; and

(E) the amount of payment as being inadequate to cover costs.

(l) Cost reports. Each hospital must submit a cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by the HHSC [~~department~~] or its designee. The HHSC [~~department~~] or its designee uses data from these reports in rebasing years, in making adjustments as described in subsections (n) and (q) of this section, and in completing cost settlements for children's hospitals.

(m) Cost settlements. If a hospital has already begun its fiscal year on September 1, 1986, cost settlement for that portion of the hospital's fiscal year which occurs before September 1, 1986, is based on reimbursement for covered inpatient hospital services under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248. Except as otherwise specified in subsection (q) of this section, there are no cost settlements for services provided to recipients admitted as inpatients to hospitals reimbursed under the prospective payment system on or after the implementation date of the prospective payment system.

(n) Adjustments to base year claims data.

(1) Beginning with 1985 hospital fiscal year cost reporting periods, the HHSC [~~department~~] or its designee adjusts each hospital's base year claims data and resulting payment division and standard dollar amount to reflect the interim rate established at tentative and final settlement, if applicable, of the cost reporting period associated with the base year. The adjustments are applied only to claims data for months within the base year that coincide with months within the hospital's cost reporting period. The claims data for months within the base year that do not coincide with months within the hospital's cost reporting period remain unchanged until the tentative or final settlement of the cost reporting period containing those months has been completed. The adjustments are applied to the next prospective year beginning September 1, 1988, except as specified in subparagraphs (A), (B), and (C) of this paragraph.

(A) If the tentative or final settlement is not completed and available at least 60 days before the beginning of the next prospective year, any adjustment required because of the settlement is applied to the subsequent prospective year.

(B) If a review or appeal of a tentative or final settlement is not completed at least 60 days before the beginning of the next prospective year, the interim rate applied to the claims data on which the hospital's payment division and standard dollar amount are established is the interim rate established at tentative or final settlement by the department or its designee. Any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year.

(C) The HHSC [~~department~~] or its designee makes a March 1, 1988, adjustment [~~to each hospital's 1985 base year claims data and resulting payment division and standard dollar amount to reflect the interim rate established at tentative and final settlement, if applicable, of the cost reporting period associated with the 1985 base year. Any additional adjustments required as a result of reviews and appeals described in subsection (k) of this section and completed by December 31, 1987, are also reflected in the March 1, 1988, adjustment. Future adjustments as described in this subsection and subsection (k) of this section are made at the beginning of each prospective year.~~]

(2) The HHSC or its designee updates the standard dollar amount each year for each payment division by applying a cost-of-living index to the standard dollar amount established for the base year. The cost-of-living index for state fiscal years 2003, 2004, [~~and~~] 2005, 2006 and 2007 will not be applied to the standard dollar amount for admissions during the period September 1, 2003 through August 31, 2007 [~~2005~~]. The index used to update the standard dollar amounts is the greater of:

(A) the Health Care Financing Administration's (HCFA) Market Basket Forecast (PPS Hospital Input Price Index) based on the report issued for the federal fiscal year quarter ending in March of each year, adjusted for the state fiscal year by summing one-third of the annual forecasted rate of the index for the current calendar year and two-thirds of the annual forecasted rate of the index for the next calendar year; or

(B) an amount determined by selecting the lesser of the following two measures:

(i) the change in total charges per case for the latest year available compared to total charges per case for the previous year; or

(ii) the change in the Texas medical consumer price index-urban (that is, the arithmetic mean of the Houston and Dallas/Fort Worth medical consumer price indices for urban consumers) for the latest year available compared to the Texas medical consumer price index-urban for the previous year.

(o) Reimbursement to in-state children's hospitals. The HHSC or its designee reimburses in-state children's hospitals under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA) except for the cost of direct graduate medical education (DGME). For cost reporting periods beginning on or after September 1, 2003, children's hospitals with allowable DGME costs as determined under TEFRA principles will receive a pro rata share of their annual TEFRA DGME cost based on appropriations or allocations from appropriations made specifically for this purpose. The amount and frequency of interim payments will also be subject to the availability of appropriations made specifically for this purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report. The HHSC or its designee establishes target rates and stipulates payments per discharge, incentives, and percentage of payments. The HHSC [~~department~~] or its designee uses each hospital's 1987 final audited cost reporting period (fiscal year ending during calendar year 1987) as its target base period. The target base period for hospitals recognized by Medicare as children's hospitals after the implementation of this subsection

is the hospital's first full 12-month cost reporting period occurring after its recognition by Medicare. The HHSC or its designee annually increases each hospital's target amount for the target base period by the cost-of-living index described in subsection (n) of this section. The HHSC or its designee selects a new target base period at least every three years. The HHSC or its designee bases interim payments to each hospital upon the interim rate derived from the hospital's most recent tentative or final Medicaid cost report settlement. If a Title XIX participating hospital is subsequently recognized by Medicare as a children's hospital after the implementation of this subsection, the hospital must submit written notification to the HHSC or its designee and include adequate documentation and claims data. Upon receipt of the written notification from the hospital, the HHSC or its designee reserves the right to take 90 days to convert the hospital's reimbursement to the reimbursement methodology described in this subsection.

(p) Day and cost outliers. Effective for inpatient hospital services provided on or after July 1, 1991, the HHSC or its designee pays day or cost outliers for medically necessary inpatient services provided to clients less than age one in all Title XIX participating hospitals and clients less than age six in disproportionate share hospitals, as defined by the HHSC, that are reimbursed under the prospective payment system. For purposes of outlier payment adjustments, disproportionate share hospitals are defined as those hospitals identified by the HHSC during the previous state fiscal year as disproportionate share hospitals. If an admission qualifies for both a day and a cost outlier, only the outlier resulting in the highest payment to the hospital is paid. (Note: This subsection does not address reimbursement for the provision of other necessary inpatient hospital services under the Early and Periodic Screening, Diagnosis, and Treatment Program, as required by the Omnibus Budget and Reconciliation Act of 1989.)

(1) To establish day outliers, the HHSC or its designee first removes from the current base year data those admissions whose actual lengths of stay are greater than or equal to plus or minus three standard deviations from the arithmetic mean length of stay for each DRG. The HHSC or its designee then recomputes the arithmetic mean length of stay and the standard deviations for each DRG. Inpatient days, which exceed two standard deviations beyond the arithmetic mean length of stay for the DRG are eligible for a day outlier. Payment is based on 70% of a per diem amount of a full DRG payment. The per diem amount is established by dividing the full DRG payment amount by the arithmetic mean length of stay for the DRG.

(2) To establish cost outliers, the HHSC or its designee first determines what the amount of reimbursement for the admission would have been if the HHSC or its designee reimbursed the hospital under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). The HHSC or its designee then determines the outlier threshold by using the greater of the full DRG payment amount multiplied by 1.5 or an amount determined by selecting the lesser of the universe mean of the current base year data multiplied by 11.14, or the hospital's standard dollar amount multiplied by 11.14. The hospital's standard dollar amount is the amount that the HHSC or its designee uses to reimburse the hospital under the prospective payment system. The outlier threshold is subtracted from the amount of reimbursement for the admission established under the TEFRA principles. The HHSC or its designee multiplies any remainder by 70% to determine the actual amount of the cost outlier payment.

(3) If a recipient less than age one is admitted to and remains in a hospital past his or her first birthday, medically necessary inpatient days and hospital charges after the child reaches age one are included in calculating the amount of any day or cost outlier payment.

(q) Hospitals with 100 or fewer licensed beds and certain hospitals with more than 100 licensed beds. The policies in this subsection apply only to hospital fiscal years beginning on or after September 1, 1989 for hospitals with 100 or fewer licensed beds at the beginning of the hospital's fiscal year or hospital fiscal years beginning on or after September 1, 2003 for hospitals with more than 100 licensed beds at the beginning of the hospital's fiscal year, located in a county that is not in a metropolitan statistical area (MSA) as defined by the U.S. Office of Management and Budget (OMB) and designated by the Center for Medicare & Medicaid Services as a Sole Community Provider (SCH) or Rural Referral Center RCC. At tentative cost settlement of the hospital's fiscal year (with subsequent adjustment at final cost settlement, if applicable), the HHSC or its designee determines what the amount of reimbursement during the fiscal year would have been if the HHSC or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). This determination is made without imposing a TEFRA cap. If the amount of reimbursement under the TEFRA principles is greater than the amount of reimbursement received by the hospital under the prospective payment system, the HHSC or its designee reimburses the difference to the hospital.

(r) Reimbursement to out-of-state children's hospitals. For admissions on or after September 1, 1991, the standard dollar amount for out-of-state children's hospitals is calculated as specified in this subsection. The HHSC [~~department~~] or its designee calculates the overall average cost per discharge for in-state children's hospitals based on tentative or final settlement of cost reporting periods ending in calendar year 1990. The overall average cost per discharge is adjusted for intensity of service by dividing it by the average relative weight for all admissions from in-state children's hospitals during state fiscal year 1990 (September 1, 1989 through August 31, 1990). The adjusted cost per discharge is updated each year by applying the cost-of-living index described in subsection (n) of this section. The resulting product is the standard dollar amount to be used for payment of claims as described in subsection (e) of this section. The HHSC [~~department~~] or its designee selects a new cost reporting period and admissions period from the in-state children's hospitals at least every three years for the purpose of calculating the standard dollar amount for out-of-state children's hospitals.

(s) Reimbursement of inpatient direct graduate medical education (GME) costs. The Medicaid allowable inpatient direct graduate medical education cost, as specified under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, is calculated for each hospital having inpatient direct graduate medical education costs on its tentative or final audited cost report. Those inpatient direct medical education costs are removed from the calculation of the interim rate described in subsection (b)(7) of this section and not used in the calculation of the provider's standard dollar amount described in subsection (c) of this section. Those allowable inpatient direct graduate medical education costs for services delivered to Medicaid eligible patients with inpatient admission dates on or after September 1, 1997, will be subject to the cost determination and settlement provisions as described in this subsection. No Medicaid inpatient direct graduate medical education cost settlement provisions are applied to inpatient hospital admissions prior to September 1, 1997. For cost reporting periods beginning on or after September 1, 2003, providers with Medicaid allowable direct graduate medical education costs as described in this subsection will receive a pro rata share of their annual GME cost based on appropriations or allocations from appropriations made specifically for this purpose.

The amount and frequency of interim payments will also be subject to the availability of appropriations made specifically for this purpose. Interim payments are subject to settlement at both tentative and final audit of a provider's cost report.

(t) Non-State Owned Urban Hospital Supplemental Inpatient Payments. Notwithstanding other provisions of this chapter, supplemental payments will be made each state fiscal year in accordance with this subsection to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by a publicly-owned hospital or hospital affiliated with a hospital district in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Midland, Potter, Randall, Tarrant, and Travis. Supplemental payments will be made for inpatient services on or after July 6, 2001 for Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis counties. Supplemental payments will be made for inpatient services on or after February 7, 2004 for Midland County. Supplemental payments will be made for inpatient services on or after May 29, 2004 for Potter and Randall counties.

(2) State funding for supplemental payments authorized under this paragraph will be limited to and obtained through intergovernmental transfers of local or hospital district funds. The supplemental payments described in this paragraph will be made in accordance with the applicable regulations regarding the Medicaid upper limit provisions codified at 42 C.F.R. §447.272.

(3) In each county listed in paragraph (1) of this subsection, the publicly-owned hospital or hospital affiliated with a hospital district that incurs the greatest amount of cost for providing services to Medicaid and uninsured patients, will be eligible to receive supplemental high volume payments. The supplemental payments authorized under this paragraph are subject to the following limits:

(A) In each state fiscal year the amount of any inpatient supplemental payments and outpatient supplemental payments may not exceed the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E) of this chapter (relating to Reimbursement to Disproportionate Share Hospitals (DSH)); and

(B) The amount of inpatient supplemental payments and fee-for-service Medicaid inpatient payments the hospital receives in a state fiscal year may not exceed Medicaid inpatient billed charges for inpatient services provided by the hospital to fee-for-service Medicaid recipients in accordance with 42 CFR §447.271.

(4) An eligible hospital will receive quarterly supplemental payments. The quarterly payments will be limited to one-fourth of the lesser of:

(A) The difference between the hospital's Medicaid inpatient billed charges and Medicaid payments the hospital receives for services provided to fee-for-service Medicaid recipients. Medicaid billed charges and payments will be based on a twelve consecutive-month period of fee-for-service claims data selected by HHSC; or

(B) The difference between the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E) of this chapter and the hospital's DSH payments as determined by the most recently finalized DSH reporting period.

(5) For purposes of calculating the "hospital specific limit" in paragraph (4)(B) of this subsection, the "cost of services to uninsured patients, " as defined by §355.8065(b)(5) of this chapter and "Medicaid shortfall," as defined by §355.8065(b)(16) of this chapter, will be adjusted as follows:

(A) The amount of Medicaid payments (including inpatient and outpatient supplemental payments) that exceed Medicaid cost will be subtracted from the "Medicaid shortfall."

(B) The amount of the "Medicaid shortfall," as adjusted in accordance with subparagraph (A) of this paragraph, will be subtracted from the "cost of services to uninsured patients" to ensure that, during any state fiscal year, a hospital does not receive more in total Medicaid payments (inpatient and outpatient rate payments, graduate medical education payments, supplemental payments and disproportionate share hospital payments) than its cost of serving Medicaid patients and patients with no health insurance.

(u) [~~In accordance with this subsection and subject to the availability of funds, a high volume adjustment factor will be included in the calculation of the state fiscal year 2003 (September 1, 2002 through August 31, 2003) Standard Dollar Amount described in subsection (a)(4) of this section for eligible hospitals. For purposes of this subsection, payments made in state fiscal year 2004, prior to the effective date of this subsection, may be adjusted in accordance with the methodology set out in this subsection. Notwithstanding paragraphs (1) and (2) of this subsection, all non-state owned or operated, non public, DRG reimbursed hospitals located in urban counties with a population greater than 100,000, and Medicaid days in greater than 175% of the mean Medicaid days in state fiscal year 2002 (September 1, 2001 through August 31, 2002) will be eligible for a high volume adjustment to their state fiscal year 2004 SDA. Medicaid days will be based on hospital claims data selected by HHSC. County population will be based on the 2000 United States census. Eligible hospitals in counties with a population less than 1,000,000 will receive a high volume adjustment factor of 3.25%; eligible hospitals in counties with a population greater than 1,000,000 will receive a high volume adjustment factor of 5.125%. Effective September 1, 2004, high-volume payments previously made as an add-on percentage to standard dollar amount shall be made according to paragraph (3) of this subsection.~~]

[~~(1) Eligible Hospitals. All non-state owned or operated, non public, DRG reimbursed hospitals located in urban counties with a population greater than 100,000, and Medicaid days greater than 175% of the mean Medicaid days in state fiscal year 2001 (September 1, 2000 through August 31, 2001) will be eligible for a high volume adjustment to their SDA. Medicaid days will be based on hospital claims data selected by HHSC. County population will be based on the 2000 United States census.~~]

[~~(2) All eligible hospitals in counties with a population less than 1,000,000 will receive a high volume adjustment factor of 6.50%; eligible hospitals in counties with a population greater than 1,000,000 will receive a high volume adjustment factor of 10.25%. High-volume payments will be made to eligible hospitals that serve as a safety net in providing emergency and inpatient care.~~]

[~~(3)~~] High-volume payments recognize the higher medical assistance costs and indigent care cost of hospitals that treat higher levels of low-income and indigent patients. Eligible hospitals are defined as non-state owned or operated, non-public, hospitals located in urban counties with Medicaid days greater than 160% of the mean Medicaid days. High-volume payments not exceeding $26,400,000 [~~totaling $22,500,000~~] shall be allocated in proportion to uncompensated care loss for eligible hospitals participating in the current year DSH program. [~~High-volume payments totaling $63,808,065 shall be made to eligible hospitals in proportion to Medicaid inpatient days of service.~~] Payments under this provision will be made annually based on current year finalized Medicaid DSH claims data. The state shall adjust the high volume payments in accordance with applicable Medicaid charge upper limit regulations. Any adjustment shall be made on a proportional basis in order to allow eligible hospitals to participate to the

fullest extent possible within the limits on disproportionate share hospital payments. HHSC shall use current year DSH data to determine Medicaid days. County population will be based on the 2000 United States census.

(v) State Owned Hospital Supplemental Inpatient Payments. Notwithstanding other provisions of this attachment, supplemental payments will be made each state fiscal year in accordance with this subsection to state government-owned or operated hospitals for inpatient services provided to Medicaid patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by state government-owned or operated hospitals on or after December 13, 2003. To qualify for a supplemental payment, the hospital must be owned or operated by the state of Texas.

(2) The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit and the inpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this attachment. The aggregate upper payment limit will be calculated, based on Medicare payment principles and in accordance with the federal upper limit regulations at 42 CFR §447.272, using the most recent cost report data available.

(3) The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:

(A) dividing each hospital's fee-for-service Medicaid payments by the sum of the Medicaid fee-for-service payments of all state government-owned of operated hospitals;

(B) multiplying the percentage calculated in subparagraph (A) of this paragraph by the aggregate supplemental payment calculated in paragraph (2) of this subsection.

(4) Supplemental payments determined under this subsection will be calculated annually and paid quarterly.

(5) Supplemental payments made under this subsection when combined with other inpatient payments made under this section shall not exceed the maximum amounts allowable under applicable federal regulations at 42 CFR §447.271.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503020
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 424-6900

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1 TAC §355.8065

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8065 concerning Additional Reimbursement to Disproportionate Share Hospitals, in its Medicaid Reimbursement Rates chapter.

Background and Justification

Consistent with the amounts appropriated to the Texas Medicaid Program, this amendment is necessary to support the efforts of local safety net hospitals to provide for health care services for the indigent population in their community. HHSC proposes to change the current applied conversion factors for hospitals based on available funds. Also, due to the consolidation of Health and Human Services Commission agencies, a terminology change throughout the chapter replaces the term "The Texas Department of Health" and "Texas Department of Mental Health and Mental Retardation" with the "Department of State Health Services" or DSHS. References to TDHS were deleted.

Section-by-Section Summary

Subsection (c) paragraph (7) removes the reference to pediatric, adolescent facilities and trauma facilities.

Subsection (c) paragraph (7) subparagraph (A) changes the reference to Bureau of Emergency Management to Office of EMS/Trauma Systems Coordination.

Subsection (f) paragraph (2) subparagraph (C) changes DSH conversion factors from certain hospital districts and children's hospitals.

Subsection (f) paragraph (2) subparagraph (D) allows for changes in the state fiscal years that the monthly disproportionate share payment is calculated.

Subsection (f) paragraph (2) subparagraph (D) clause (i) - clause (iv) change the conversion factors used to calculate the monthly DSH payment.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Suehs has determined that for each year of the first five years the §355.8063 is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be extending the State's program to support urban safety net hospitals that treat indigent patients.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Arnulfo Gomez, at HHSC (H-600), P.O. Box 85200-5200, Austin, Texas, by fax to (512) 491-1953, or by e-mail to arnulfo.gomez@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 30, 2005 at 1:00 p.m. in the Lone Star Room of Building H, Health and Human Services Commission, 11209 Metric Blvd., Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Carmen Capetillo at (512) 491-1104.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements).

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8065. Additional Reimbursement to Disproportionate Share Hospitals.

(a) Introduction. Hospitals participating in the Texas Medical Assistance (Medicaid) program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement from the disproportionate share hospital fund. The single state agency or its designee shall establish each hospital's eligibility for and amount of reimbursement as specified in this section. For purposes of Medicaid disproportionate share eligibility determination, a multi-site hospital is considered as one provider unless it has separate Medicaid cost reports for each site. To verify data referred to in this section, hospitals must allow state personnel access to the hospital and its records.

(b) Definitions. For purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjusted hospital specific limit--A hospital specific limit trended forward to account for inflation update factor since the base year.

(2) Bad debt charges--Uncollectible inpatient and outpatient charges that result from the extension of credit.

(3) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent or providing, funding, or otherwise financially supporting health care services provided to financially indigent patients through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(4) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a hospital fiscal year. These charges do not include bad debt charges, contractual allowances or discounts (other than for indigent patients not eligible for medical assistance under the approved Medicaid state plan); that is, reductions or discounts in charges given to other third party payers such as, but not limited to, health care maintenance organizations, Medicare or Blue Cross. The amount of total charity charges must be consistent with the amount reported on the Department of State Health Services [~~Texas Department of Health's~~] annual hospital survey.

(5) Cost of services to uninsured patients--Inpatient and outpatient charges to patients who have no health insurance or other source of third party payment for services provided during the year, multiplied by the hospital's ratio of costs to charges (inpatient and outpatient), less the amount of payments made by or on behalf of those patients. Uninsured patients are patients who have no health insurance or other source of third party payments for services provided during the year. Uninsured patients include those patients who do not possess health insurance that would apply to the service for which the individual sought treatment.

(6) Cost-to-charge ratio (inpatient only)--Hospital's overall inpatient cost-to-charge ratio, as determined from its Medicaid cost report it submitted for its fiscal year ending in the previous calendar year. The latest available Medicaid cost report will be used in the absence of the cost report for the hospital fiscal year ending in the previous calendar year.

(7) Cost-to-charge ratio (inpatient and outpatient)--Hospital's overall cost-to-charge ratio, as determined from its Medicaid cost report it submitted for its fiscal year ending in the previous calendar year. The latest available Medicaid cost report will be used in the absence of the cost report for the hospital fiscal year ending in the previous calendar year.

(8) Financially indigent--An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(9) Gross inpatient revenue--Amount of gross inpatient revenue (charges) reported by the hospital in the appropriate part of the Medicaid cost report it submitted for its fiscal year ending in the previous calendar year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, and other revenue that is unidentified. The latest available Medicaid cost report will be used in the absence of the cost report for the hospital fiscal year ending in the previous calendar year.

(10) Hospital eligibility criteria--The financial criteria used by a hospital to determine if a patient is eligible for charity care. The system includes income levels and means testing indexed to the federal poverty guidelines; provided, however that a hospital may not establish an eligibility system that sets the income level eligible for charity care lower than that required by counties under the Texas Health and Safety Code, §61.023, or higher, in the case of the financially indigent, than 200% of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(11) Hospital specific limit--The sum of the following two measurements:

(A) the Medicaid shortfall; and

(B) cost of services to uninsured patients.

(12) Inflation update factor--The commission or its designee applies a cost of living index to a hospital's unreimbursed Medicaid costs and its cost of treating uninsured patients. The index used is the greater of:

(A) the Centers for Medicare and Medicaid Services (CMS) Market Basket Forecast (PPS Hospital Input Price Index) based on the report issued for the federal fiscal year quarter ending in March of each year, adjusted for the state fiscal year by summing one-third of the annual forecasted rate of the index for the current calendar year and two-thirds of the annual forecasted rate of the index for the next calendar year; or

(B) an amount determined by selecting the lesser of the following two measures:

(i) the change in total charges per case for the latest year available compared to total charges per case for the previous year; or

(ii) the change in the Texas medical consumer price index-urban (that is, the arithmetic mean of the Houston and Dallas/Fort Worth medical consumer price indices for urban consumers) for the latest year available compared to the Texas medical consumer price index-urban for the previous year.

(13) Low-income days--Number of days derived by multiplying a hospital's total inpatient census days by its low-income utilization rate.

(14) Low-income utilization rate--The result of the following computation: ((Title XIX inpatient hospital payments plus inpatient payments received from state and local governments) divided by (gross inpatient revenue multiplied by cost-to-charge ratio)) plus ((total inpatient charity charges minus inpatient payments received from state and local governments) divided by (gross inpatient revenue)).

(15) Medicaid inpatient utilization rate--Fraction expressed as a percentage, the numerator of which is the hospital's number of inpatient days attributable to patients who (for these days) were eligible for medical assistance under a state plan, and the denominator of which is the total number of the hospital's inpatient days in that period. The term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(16) Medicaid shortfall--The cost of services (inpatient and outpatient) furnished to Medicaid patients, less the amount paid under the nondisproportionate share hospital payment method under the state plan.

(17) Medically indigent--A person whose medical or hospital bills after payment by third-party payers exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(18) Medicare inpatient utilization rate--Medicare inpatient days divided by total inpatient census days.

(19) Payments received--Payments received from uninsured patients from or on behalf of uninsured patients as defined in paragraph (5) of this subsection.

(20) Rural area--Area outside a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA). MSA and PMSA are defined by the Office of Management and Budget.

(21) Total inpatient census days--Total number of a hospital's inpatient census days during its fiscal year ending in the previous calendar year.

(22) Total inpatient charity charges--Total amount (excluding bad debt charges) of the hospital's charges for inpatient hospital services attributed to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period. The total inpatient charges attributable to charity care does not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as but not limited to HMOs, Medicare, or Blue Cross. The amount of total inpatient charity charges must be consistent with the amount reported on the commission or its designee's annual hospital survey.

(23) Total Medicaid inpatient days--Total number of Title XIX inpatient days based on the latest available state fiscal year data for patients eligible for Title XIX benefits. The term excludes days for patients who are covered for services which are fully or partially reimbursable by Medicare. The term includes Medicaid-eligible days of care billed to managed care organizations. Total Medicaid inpatient days includes days that were denied payment for reasons other than eligibility. Included are inpatient days of care provided to patients eligible for Medicaid at the time the service was provided, regardless of whether the claim was filed or paid. These denied claims include, but are not limited to, claims for patients whose spell of illness limits are exhausted, or claims that were filed late. The term excludes days attributable to Medicaid patients between the ages of 21 and 65 who live in an institution for mental diseases. The term includes days attributable to individuals eligible for Medicaid in other states. Total Medicaid inpatient days includes days with dates of admissions between September 1 and August 31 (state fiscal year) and claims finalized dates within the fiscal year and for nine months after the end of the fiscal year (May 31).

(24) Total Medicaid inpatient hospital payments--Total amount of Title XIX funds, excluding Medicaid disproportionate share funds, a hospital received for admissions during the latest available state fiscal year for inpatient services. The term includes dollars received by a hospital for inpatient services from managed care organizations. The term includes Medicaid inpatient payments received by a hospital for patients eligible for Medicaid in other states. Total Medicaid inpatient hospital payments includes payments associated with dates of admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for nine months after the end of the fiscal year (May 31).

(25) Total operating costs--Total operating costs of a hospital during its fiscal year ending in the calendar year before the start of the current federal fiscal year, according to the hospital's Medicaid cost report (tentative, or final audited cost report, if available).

(26) Total state and local revenue--Total amount of state and local payments a hospital received for inpatient care, excluding all Title XIX payments, during its fiscal year ending in the previous calendar year. Sources of state and local payments include but are not limited to County Indigent Health Care, Children with Special Health Care Needs, Kidney Health Care, and tax funds. Payment sources containing federal dollars are not to be included in state and local payments. These sources include, but are not limited to: Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and TRICARE Foundation Health, Medicare, and Medicare/Medicaid contractual funds and allowances. The commission or its designee adjusts tax dollars for hospitals that report all or none of their tax dollars received as inpatient tax dollars.

To make adjustments, the commission or its designee uses the appropriate parts of the Medicaid cost report that the hospital submitted for its fiscal year ending in the previous calendar year.

(27) Urban--Area inside an MSA or PMSA.

(28) Weighted low-income days--Low-income days multiplied by an appropriate weighing factor.

(29) Weighted Medicaid days--Medicaid days multiplied by an appropriate weighing factor.

(30) Available fund (state mental and chest hospitals)--Sum of 100% of their adjusted hospital specific limits.

(31) Available fund (hospitals other than mental and chest hospitals)--Total federal fiscal year cap (state disproportionate share hospital allotment) minus the available fund for state teaching hospitals minus the available fund for state mental and chest hospitals.

(c) Conditions of participation. Before the beginning of each state fiscal year, which begins September 1, the single state agency or its designee shall survey Medicaid hospitals to determine which hospitals meet the state's conditions of participation. Hospitals must allow state personnel access to the hospital and its records to ensure compliance with the conditions of participation. Failure to meet all of the conditions of participation shall result in ineligibility for participation in the program. These conditions of participation do not apply to state-owned teaching hospitals as specified in §355.8067 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals). The conditions of participation are as follows.

(1) Hospital eligibility criteria for indigent patients needing medical care. Each Medicaid hospital must submit to the state Medicaid director its hospital eligibility criteria for indigent patients and the procedures for identifying those indigent patients eligible for emergency and nonemergency medical care. Hospital eligibility criteria should address financially indigent people as well as the medically indigent and are indexed to the federal poverty guidelines. Hospitals must identify the number of patients to whom they provide charity care and must make available to state personnel sufficient records to document the amount of charity care provided to those patients. A hospital must allow state personnel to observe the implementation of its stated charity policy and must permit state personnel access to the hospital or its records evidencing charity care. Exception: State mental hospitals and state chest hospitals are exempt. Indigent care criteria for these hospitals are defined in state law.

(2) Charity charge requirements. Exceptions: Urban hospitals with combined Medicaid and Medicare inpatient utilization rates equal to or greater than 80% are exempt. Rural and children's hospitals with combined Medicare and Medicaid inpatient utilization rates equal to or greater than 65% are exempt. Any hospital that qualifies for Medicaid disproportionate share funds in a state fiscal year, and that did not get Medicaid disproportionate share funds in the previous year, is exempt from this specific condition. State mental hospitals and state chest hospitals are exempt. The ratio of a hospital's total inpatient and outpatient charity charges of a hospital fiscal year must be equal to or greater than 25% of its net disproportionate share payments received in the next state fiscal year.

(3) Posting requirements. Each hospital must annually provide assurances to the state Medicaid director that it posts policies informing patients and prospective patients of its eligibility and charity care. These policies must be posted prominently and continuously in common, patient-entry points. Hospitals must advise all patients of the availability of no-cost medical care and the application procedures. The posting must be in English and Spanish.

(4) Reporting requirements. Each hospital must report receipt and expenditure of Medicaid disproportionate share funds to the commission or its designee at least once a year. Each hospital must maintain records for the receipt and expenditure of its disproportionate share funds for five years.

(5) Community health care assessment. Each hospital, or group of hospitals, must annually furnish to the commission or its designee a copy, developed at the direction of the hospital's governing board, of its assessment of the health care needs of its community. The assessment must contain a socioeconomic and demographic description of the hospital's service area and an assessment of the service area's existing health care resources. The assessment must demonstrate how the hospital is using its disproportionate share funds to address its community health needs. Exceptions: State mental hospitals and state chest hospitals are exempt because their expenditures are governed by state law.

(6) Alternative access to primary care. Each hospital must annually report to the commission or its designee the availability of alternative access (other than emergency care) to primary care in its community. Alternative access to primary care includes, but is not limited to, primary care physician offices, minor emergency centers, and primary care clinics. Hospitals must have plans to arrange for nonemergency patients to receive care that is not in their emergency rooms, unless they can demonstrate that there is no feasible alternative in the community. This kind of plan includes, but is not limited to, a hospital-based clinic for nonemergent patients referred to after triage. Hospitals also must report their progress in treating nonemergency patients apart from their emergency rooms. Exceptions: The following hospitals are exempt from this condition: State mental and state chest hospitals; psychiatric hospitals licensed by the Department of State Health Services (DSHS) [~~Texas Department of Mental Health and Mental Retardation (TXMHMR)~~]; and certain hospitals licensed as "special" by the DSHS [~~Texas Department of Health (department)~~] (i.e., long-term care hospitals, ventilator hospitals, burn institutes, and alcohol-chemical dependency hospitals); rehabilitation hospitals; maternity hospitals; college infirmaries; contagious disease hospitals; and hospitals for the terminally ill.

(7) Trauma system. Disproportionate share hospitals must actively participate in the development of a regional trauma system, which includes trauma facility designation as defined in the state trauma laws (Health and Safety Code, §§773.111 - 773.120) and Department of State Health Services (DSHS) [~~department~~] rules. This condition shall apply only if rules and procedures to designate facilities have been adopted. Exceptions: The following hospitals are exempt from the trauma system condition: State mental and state chest hospitals; psychiatric hospitals licensed by DSHS [~~TXMHMR~~]; and certain hospitals licensed as "special" by DSHS [~~the department~~] (i.e., long term care hospitals, ventilator hospitals, burn institutes, and alcohol-chemical dependency hospitals); rehabilitation hospitals; maternity hospitals; college infirmaries; contagious disease hospitals; and hospitals for the terminally ill. Pediatric and adolescent facilities are exempt from trauma facility designation requirements until the time that state law authorizes the designation of pediatric and/or adolescent trauma facilities.

(A) Hospitals qualifying for the disproportionate share program for the first time must meet the regional trauma system development participation requirement in the first year of their participation in the disproportionate share program, regional trauma system development participation and application for trauma facility designation in the second year of their participation in the disproportionate share program, regional trauma system development participation and

confirmation that a consultation survey has been scheduled or a complete designation application packet has been submitted to the Office of EMS/Trauma Systems Coordination [~~Bureau of Emergency Management~~] in the third year of their participation in the disproportionate share program, regional trauma system development participation and confirmation that a verification or designation survey has been scheduled in the fourth year of their participation in the disproportionate share program and continued participation and completed verification or designation survey in the fifth year of their participation in the disproportionate share program, continued participation and trauma facility designation in the sixth year of their participation in the disproportionate share program, and continued participation and maintenance of trauma facility designation in their subsequent years of participation in the disproportionate share program. By March 1 of each year, the Office of EMS/Trauma Systems Coordination [~~Bureau of Emergency Management~~] reports hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation status to the disproportionate share program.

(B) Hospitals shall be designated as trauma facilities under four levels that range from "basic" (stabilization and transfer of major and severe trauma patients) to "comprehensive" (care and management of all trauma patients, plus education and research

(8) Maintenance of effort. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs and PMSAs are not eligible for disproportionate share payments if local revenues are reduced as a result of disproportionate share funds received.

(9) Two-physician requirement. In order to qualify for disproportionate share hospital payments, each hospital must have at least two physicians (M.D. or D.O.) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to Medicaid recipients [~~clients~~]. The two-physician requirement does not apply to hospitals whose inpatients are predominantly under 18 years old or that did not offer nonemergency obstetrical services as of December 22, 1987.

(d) Qualifying formulas for determining disproportionate share status. Each hospital must have a Medicaid inpatient utilization rate, at a minimum, of 1.0%. The single state agency or its designee shall identify the qualifying Medicaid disproportionate share providers from among the hospitals that meet the two-physician requirement and the state's conditions of participation, as specified in subsection (c)(1) - (9) of this section, by using the following formulas. In the case of hospitals that have merged to form a single Medicaid provider, the single state agency or its designee shall aggregate the data points from the individual hospitals that now make up the single provider to determine whether the single Medicaid provider qualifies as a Medicaid disproportionate share hospital. Medicaid disproportionate share hospitals shall receive payments if they merge with other hospitals during the fiscal year, if they continue to meet the two-physician requirement, and if they meet the other conditions of participation. Children's hospitals that do not otherwise qualify as disproportionate share hospitals shall be deemed disproportionate share hospitals. The formulas are as follows:

(1) a Medicaid inpatient utilization rate at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals participating in the Medicaid program: Title XIX Inpatient Days/Total Inpatient Census Days;

(2) for rural hospitals, a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all hospitals participating in the Medicaid program; or

(3) a low-income utilization rate exceeding 25% but not more than 100%. For a hospital, the low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated as follows:

(A) the total Medicaid inpatient payments paid to the hospital, plus the amount of payments received directly from state and local governments for inpatient hospital care, excluding all Title XIX payments, in a hospital fiscal year, divided by a hospital's gross inpatient revenue multiplied by the hospital's inpatient cost-to-charge ratio for the same cost-reporting period: (Title XIX Inpatient Hospital Payments + Total State and Local Revenue)/(Gross Inpatient Revenue x Cost to Charge Ratio).

(B) the total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third-party or personal resources), excluding bad debt charges, in a cost reporting period, minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Title XIX payments, in a hospital fiscal year, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributable to charity care will not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid state plan); that is, reductions or discounts in charges given to other third-party payers such as but not limited to HMOs, Medicare, or Blue Cross: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue.

(4) total Medicaid inpatient days at least one standard deviation above the mean Medicaid inpatient days for all hospitals participating in the Medicaid program.

(5) Total Medicaid inpatient days at least 75 percent of one standard deviation above the mean Medicaid inpatient days for all hospitals, participating in the Medicaid program, in urban counties with populations of 250,000 persons or less, according to the most recent decennial census.

(e) Determining disproportionate share status. To determine Medicaid disproportionate share status:

(1) the single state agency arrays each hospital's Medicaid utilization rate in descending order. The single state agency first selects hospitals meeting the two-physician requirement or one of the exceptions to the requirement whose Medicaid utilization rates are at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals participating in the Medicaid program. The state considers these hospitals to be Medicaid disproportionate share hospitals;

(2) the single state agency arrays each rural hospital's Medicaid utilization rate in descending order. The single state agency then selects rural hospitals meeting the two-physician requirement or one of the exceptions to the requirement whose Medicaid utilization rate is above the mean Medicaid utilization rate for all hospitals participating in the Medicaid program. The state considers these hospitals to be Medicaid disproportionate share hospitals;

(3) the single state agency then arrays each remaining hospital's low income utilization rate in descending order. The single state agency selects hospitals meeting the two-physician requirement or one of the exceptions to the requirement whose low income utilization rates are greater than 25%. The state considers these hospitals to be Medicaid disproportionate share hospitals;

(4) the single state agency arrays each remaining hospital's total Medicaid inpatient days in descending order. The single state agency selects hospitals meeting the two-physician requirement or one

of the exceptions to the requirement whose total inpatient Medicaid days is at least one standard deviation above the mean Medicaid inpatient days for all hospitals participating in the Medicaid program. The state considers these hospitals to be Medicaid disproportionate share hospitals.

(5) the single state agency arrays each remaining hospital's total Medicaid inpatient days in descending order. The single state agency selects hospitals, located in urban counties with populations of 250,000 persons or less, meeting the two-physician requirement or one of the exceptions to the requirement, whose total Medicaid inpatient days is at least 75 percent of one standard deviation above the mean Medicaid inpatient days for all hospitals participating in the Medicaid program in urban counties of 250,000 persons or less, according to the most recent decennial census. The state considers these hospitals to be Medicaid disproportionate share hospitals.

(f) Reimbursing Medicaid disproportionate share hospitals. The commission shall reimburse Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Before the start of the next state fiscal year, the commission determines the size of the available funds to reimburse disproportionate share hospitals for the next state fiscal year, which begins each September 1. The funds available to reimburse the state chest hospitals and state mental hospitals equal the total of their adjusted hospital specific limits. The available fund for the remaining hospitals equals the lesser of the funds remaining in the state's annual disproportionate share allotment or the sum of qualifying hospitals' adjusted hospital specific limits. Payments shall be made in the following manner, unless the commission determines the hospital's proposed reimbursement has exceeded its specific limit.

(1) A state chest hospital meets the requirements for disproportionate share status and provides inpatient hospital services receives annually up to 175 percent f its adjusted hospital specific limit. A state mental hospital that meets the requirements of disproportionate share status and provides inpatient psychiatric services receives 100 percent of its adjusted hospital specific limit.

(2) For the remaining hospitals, payments will be made based on both weighted inpatient Medicaid days and weighted low-income days. The commission weights each hospital's total inpatient Medicaid days and low-income days by the appropriate weighting factor. The commission defines a low-income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending the previous calendar year by its low-income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs shall receive weights based proportionally on the MSA population according to the most recent decennial census. MSAs with populations greater than or equal to 121,000, according to the most recent decennial census, are considered "the largest MSAs." Children's hospitals also shall receive weights because of the special nature of the services they provide. All other hospitals receive weighting factors of 1.0. The inpatient Medicaid days of each hospital shall be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund shall be divided into two parts. One half of the available fund will reimburse each qualifying hospital by its percent of the total inpatient Medicaid days. One-half of the available fund will reimburse each qualifying hospital by its percent of low income days. The commission determines whether hospitals in rural areas will receive 5.5% or more of the gross disproportionate share hospital funds for non-state hospitals. If hospitals in rural areas will receive at least 5.5 % of the gross non-state hospital funds, the commission will reimburse them using existing principles. If hospitals in rural areas will not receive at least 5.5 % of non-state hospital funds, the commission will reimburse them at 5.5 percent of non-state hospital funds, using existing principles. Reimbursement for the remaining hospitals is determined as follows:

(A) The single state agency or its designee determines the average monthly number of weighted Medicaid inpatient days and weighted low-income days of each qualifying hospital.

(B) A qualifying hospital receives a monthly disproportionate share payment based on the following formula:
Figure: 1 TAC §355.8065(f)(2)(B) (No change.)

(C) All MSA population data are from the most recent decennial census. The specific weights for certain hospital districts and children's hospitals are as follows:

(i) Children's hospitals are weighted at 1.25.

(ii) MSAs with populations greater than or equal to 121,000 and less than 300,000 are weighted at 2.75.

(iii) MSAs with populations greater than or equal to 300,000 and less than 1,000,000 are weighted at 3.0.

(iv) MSAs with populations greater than or equal to 1,000,000 and less than 3,000,000 are weighted at 3.25.

(v) MSAs with populations greater than or equal to 3,000,000 are weighted at 3.75.

(D) For state fiscal year 2006 [~~2004~~] (September 1, 2005 [~~2003~~] through August 31, 2006 [~~2004~~]), and state fiscal year 2007 [~~2005~~] (September 1, 2006 [~~2004~~] through August 31, 2007 [~~2005~~]), the monthly disproportionate share payment calculated under subparagraph (C) of this paragraph is subject to a conversion factor that is applied as follows:

(i) A conversion factor of 1.10 [~~1.0875~~] is applied to payments made to hospital districts located in MSAs with populations greater than 3 million.

(ii) A conversion factor of 1.01 [~~1.02~~] is applied to payments made to hospital districts located in MSAs with populations between 1 and 3 million.

(iii) A conversion factor of .97 [~~.974~~] is applied to payments made to children's hospitals.

(iv) A conversion factor of .93 [~~.94~~] is applied to payments made to private, urban, general hospitals located in a MSA.

(v) A conversion factor of 1.0 is applied to payments made to all other hospitals.

(vi) For purposes of this section, a private, urban, general hospital is defined as a hospital that is not operated by a political subdivision of the state, is not licensed under Chapter 577, Health and Safety Code, to provide mental health services or is not exempted from the Medicare and Medicaid prospective payment systems as a children's hospital, and is eligible for additional reimbursement from the disproportionate share hospital fund.

(E) The commission or its designee determines the hospital specific limit for each disproportionate share hospital. This limit is the sum of a hospital's Medicaid shortfall, as defined in subsection (b)(16) of this section, and its cost of services to uninsured patients, as defined in subsection (b)(5) of this section, multiplied by the appropriate inflation update factor, as provided for in subsection (g)(2)(E) of this section.

(i) The Medicaid shortfall includes total Medicaid billed charges and any Medicaid payment made for the corresponding inpatient and outpatient services delivered to Texas Medicaid clients, as determined from the hospital's fiscal year claims data, regardless of whether the claim was paid. These denied claims include, but are not limited to, patients whose spell of illness claims were exhausted, or payments were denied due to late filing. See subsection (b)(16) of this section for definition of "Medicaid shortfall."

(ii) The total Medicaid billed charges for each hospital are converted to cost, utilizing a calculated cost-to-charge ratio (inpatient and outpatient). The commission or its designee determines that ratio by using the hospital's Form HCFA 2552, Hospital and Hospital Health Care Complex Cost Report, that was submitted for the fiscal year ending in the previous calendar year. The commission or its designee uses the latest available Medicaid cost report in the absence of the Medicaid cost report submitted in the fiscal year ending in the previous calendar year. To determine the cost-to-charge ratio (inpatient and outpatient) for each hospital, the commission or its designee uses the total cost from the HCFA 2552, Worksheet B, Part I, Column 25, and total charges from the HCFA 2552, Worksheet C Part I, Column 6. The ratio is the total cost divided by the total gross patient charges.

(iii) The commission or its designee determines the cost of services to patients who have no health insurance or source of third party payments for services provided during the fiscal year for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. The charges from reporting hospitals are multiplied by each hospital's cost-to-charge ratio (inpatient and outpatient) to determine the cost.

(iv) After the commission or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payments for services provided during the year, the commission or its designee subtracts from each hospital's cost of services the amount of payments made by or on behalf of those patients who have no health insurance or source of third party payments for services provided during the year.

(F) The commission or its designee shall trend each hospital's "hospital specific limit" calculated from its historical base period cost report to the state's fiscal year disproportionate share program. For hospitals without a full 12-month fiscal year cost report, the commission or its designee shall convert their costs to annualized hospital specific limits. The commission or its designee shall use the inflation rates described in subsection (b)(12) of this section. The commission or its designee shall calculate the number of months from the mid-point of the hospital's cost reporting period to the mid-point of the state fiscal year disproportionate share program. The commission or its designee shall then multiply the portion of the hospital's cost report year occurring in the state fiscal year by the inflation update factor used for each state fiscal year in the calculation of hospital reimbursement rates for each state fiscal year. The product of these calculations shall be multiplied by each hospital's "hospital specific limit" to obtain each hospital's "adjusted hospital specific limit."

(G) The commission or its designee compares the projected payment for each disproportionate share hospital, as determined by subsections (d) and (e) of this section, with its adjusted hospital specific limit, as determined by subparagraphs (E) and (F) of this paragraph. If the hospital's projected payment is greater than its adjusted hospital specific limit, the commission or its designee reduces the hospital's payment to its adjusted hospital specific limit.

(H) If there are disproportionate share hospital funds left in the available fund for the remaining hospitals, because some hospitals have had their disproportionate share hospital payments reduced to their adjusted hospital specific limits, the commission or its designee distributes the excess funds according to the provisions in this section. For hospitals whose projected disproportionate share hospital payments are less than their adjusted hospital specific limits, the commission or its designee does the following:

(i) calculate the difference between its adjusted hospital specific limit and its projected disproportionate share hospital payment;

(ii) add all of the differences from clause (i) of this subparagraph;

(iii) calculate a ratio for each hospital by dividing the difference from clause (i) of this subparagraph by the sum for clause (ii) of this subparagraph; and

(iv) multiply the ratio from clause (iii) of this subparagraph by the remaining available fund. Remaining Available Fund x

(I) Only those hospitals that are below their adjusted hospital specific limits are eligible to participate in this distribution. The disproportionate share hospital funds remaining in the available fund are distributed to the hospitals that have not already reached their adjusted hospital specific limits. Each hospital's total disproportionate share payment (including the redistribution of excess funds) cannot exceed its adjusted hospital specific limit.

(g) Review of agency determination. The commission or its designee notified hospitals of their tentative eligibility or ineligibility and the estimated amount of payment before the beginning of the state fiscal year. Any hospital, including those hospitals that do not qualify or that contend the amount of payment is incorrect, is allowed to request a review by the state. The actual amount of payment also may vary if a successful review request by one or more hospitals necessitates an adjustment in the amount of payments to the other hospitals in the program. Because of the state's ongoing review of data elements used in the formulas before the first monthly payment, it is possible that a hospital may either gain or lose eligibility after receiving tentative notification, which would also affect payment amounts. The hospital's written request for a review must be made to commission or its designee and must be received within 10 business days after the hospital receives notification of its eligibility or ineligibility. The hospital's request must contain specific documentation supporting its contention that factual or calculation errors were made, which, if corrected, would result in the hospital qualifying for payments or receiving payment in a corrected amount. The state will accept documentation from hospitals seeking reviews for 30 business days after the hospital receives notification of its eligibility or ineligibility.

(1) The hospital's written request for a review must be made to the director of acute care services and must be received by the director within 10 business days after the hospital receives notification of its eligibility or ineligibility. The hospital's request must contain specific documentation supporting its contention that factual or calculation errors were made, which, if corrected, would result in the hospital qualifying for payments or receiving payment in a corrected amount.

(2) The review is:

(A) limited to allegations of factual or calculation errors;

(B) limited to a review of documentation submitted by the hospital or used by the single state agency or its designee in making its original determination; and

(C) not conducted as an adversary hearing.

(3) The commission or its designee conducts the review as quickly as possible and makes its decision before the first monthly payment is made for that fiscal year. Hospitals that have requested a review are notified of the results of the review at the time of the first monthly payment. Any adjustments made as a result of these reviews will not exceed the limits of available funds for implementing the applicable disproportionate share program. Once the first monthly payment is made, no additional review or appeal is available to hospitals, with one exception. If a hospital, receiving a tentative eligibility letter and not requesting a review, then receives a letter stating the hospital is now ineligible for DSH funding, that hospital may now request a review of eligibility determination according to the terms of paragraph (1) of this subsection.

(h) Disproportionate share funds held in reserve.

(1) Hospitals participating in the disproportionate share program are required to comply at all times with the conditions of participation specified in subsection (c) of this section. If the commission or its designee has reason to believe that a hospital is not complying with the conditions of participation, the commission or its designee notifies the hospital of possible noncompliance. Upon receipt of the notice of possible noncompliance, the hospital has 30 days to demonstrate its compliance with conditions of participation. If the hospital fails to demonstrate its compliance within 30 days, the commission or its designee has the authority to hold that hospital's disproportionate share payments in reserve until the:

(A) hospital can demonstrate its compliance with the conditions of participation;

(B) decision to hold payments in reserve is reviewed and the decision results in favor of the hospital; or

(C) date the last monthly payment in the relevant state fiscal year occurs; whichever occurs first.

(2) If a hospital's disproportionate share payments are being held in reserve on the date of the last monthly payment in the state fiscal year, the amount of the payments is divided proportionately among the hospitals receiving a last monthly payment and is not restored to the hospital. If the hospital demonstrates its compliance with the conditions of participation or if the hospital receives a favorable review decision, the funds are restored to the hospital.

(3) Hospitals that have had disproportionate share payments held in reserve may request a review by the single state agency or its designee.

(A) The hospital's written request for a review must:

(i) be made to the commission or its designee;

(ii) be received by the commission or its designee within 10 days after the hospital's disproportionate share payments are held in reserve; and

(iii) contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

(i) limited to allegations of compliance with conditions of participation;

(ii) limited to a review of documentation submitted by the hospital or used by the commission or its designee in making its original determination; and

(iii) not conducted as an adversary hearing.

(C) The commission or its designee conducts the review as quickly as possible and notifies hospitals requesting the review of the results. Once the last monthly payment for the relevant state fiscal year is made, no additional review or appeal is available to hospitals.

(4) If a hospital that is already receiving Medicaid disproportionate share funds closes, loses its license, loses its Medicare or Medicaid eligibility, that hospital's disproportionate share funds are reallocated among the remaining disproportionate share hospitals. If the hospital reopens, as the same hospital type, regains similar licensure or Medicare and Medicaid eligibility during the same fiscal year, that hospital receives monthly disproportionate share payments for the remaining months in the state fiscal year, as determined by the appropriate reimbursement formula and from available funds.

(i) Provision for reduction in federal disproportionate share cap. If the federal government reduces the amount of Medicaid disproportionate share funds allotted to Texas, the state must reduce the net amount allotted to each disproportionate share hospital during the state fiscal year by the same percentage.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503021
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 9. SEED QUALITY

SUBCHAPTER B. CLASSIFICATION OF LICENSES

4 TAC §9.3

The Texas Department of Agriculture (the department) proposes an amendment to §9.3, concerning the expiration date for the Vegetable Seed license. House Bill 901, enacted by the 79th Texas Legislature, 2005, amended §61.013(d) of the Texas Agriculture Code (the Code) to change the August 31 expiration date for vegetable seed licenses to the first anniversary of the date of license issuance or renewal. The amendment to §9.3 is proposed to remove reference to August 31 as the expiration date for all vegetable seed licenses.

Ed Price, Regulatory Programs Branch Chief, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended section, as proposed.

Mr. Price has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing or administering the amended section, as proposed, will be that the amendments

will create less confusion for the applicant about the correct license fee amount. The proposed amendment will also allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the section as amended.

Comments on the proposal may be submitted to Ed Price, Regulatory Branch Chief, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The amendment to §9.3 is proposed under the Texas Agriculture Code (the Code), §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement of the Code, Chapter 61; the Code §61.013, which provides that a person may not sell or offer, expose, or otherwise distribute for sale vegetable seed for planting purposes in this state without a vegetable seed license issued by the department, and provides the department with the authority to set and collect a fee for issuance of a vegetable seed license.

The Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.3. Vegetable Seed.

(a) - (d) (No change.)

(e) A Vegetable Seed License issued under this section shall remain in force and effect until:

(1) the expiration date of the license [~~August 31 following the date of issuance~~];

(2) - (3) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 21, 2005.

TRD-200502979
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 463-4075

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CHAPTER 15. EGG LAW

4 TAC §15.4

The Texas Department of Agriculture (the department) proposes amendments to §15.4, concerning prorated license fees for egg dealer/wholesaler and egg processor licenses. House Bill 901, enacted by the 79th Texas Legislature, 2005, amended §132.024 of the Texas Agriculture Code (the Code) to change the expiration date for egg dealer/wholesaler and egg processor licenses from August 31 of each year to the first anniversary of the date of license issuance or renewal. The amendments to §132.024 of the Code eliminate the need for the department to prorate fees for egg licenses issued for only part of the year. The amendments to §15.4 are proposed to eliminate the requirement for prorating license fees.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five-year period the proposed amendments are in effect there is no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rule amendments, as proposed.

Mr. Kostroun also has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of administering and enforcing the section, as amended, will be that the amendments will create less confusion for the applicant about the correct license fee amount. The amendments will also allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendments.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §15.4 are proposed under the Code, §132.003, which provides the department with the authority to administer, the Code, Chapter 132, relating to Eggs, and adopt and enforce rules necessary to administer Chapter 132; the Code, §132.026, which authorizes the department to set the fee for a dealer-wholesaler license by rule; and the Code, §132.027 which authorizes the department to set the fee for a processor license by rule.

The code affected by the proposal is the Texas Agriculture Code, Chapter 132.

§15.4. Fees.

(a) - (c) (No change.)

[~~(d) Upon initial application, the license fees shall be prorated based on the remaining months of the license year.~~]

(d) [~~(e)~~] The fees provided in this section are applicable to the extent that they do not conflict with Chapter 2, Subchapter B of this title (relating to Consolidated Licenses).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 21, 2005.

TRD-200502981
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 463-4075

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CHAPTER 22. NURSERY PRODUCTS AND FLORAL ITEMS

4 TAC §22.2, §22.3

The Texas Department of Agriculture (the department) proposes amendments to §22.2, concerning expiration dates for Nursery/Floral licenses, and §22.3 concerning prorated Nursery/Floral license fees. The amendments to §22.2 are proposed to change all Nursery/Floral license expiration dates from October 31 to the last day of the month corresponding to the license anniversary date. The amendments to §22.3 are proposed to eliminate the requirement for prorated license fees.

David Kostroun, Assistant Commissioner for Regulatory Programs, has determined that for the first five-year period the proposed amendments are in effect there is no anticipated fiscal impact for state and local governments as a result of administering or enforcing the amendments, as proposed.

Mr. Kostroun also has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of administering and enforcing the sections, as amended, will be that the amendments will create less confusion for the applicant about the correct license fee amount. The amendments will also allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendments.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §22.2 and §22.3 are proposed under Texas Agriculture Code (the Code), §71.057, which provides that a nursery dealer or nursery agent must register with the department under this section before offering for sale or lease or otherwise distributing a nursery product, and that a nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and an annual fee; and the Code, §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§22.2. Application.

(a) - (c) (No change.)

(d) Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the license will be valid for one year and shall expire on the last day of the month corresponding to the license anniversary date [~~the expiration date of registration certificates will be October 31st of each year~~].

(e) (No change.)

§22.3. Nursery/Floral Registration Classifications and Fees.

[~~(a) The fee for a new certificate will be prorated as outlined on the Nursery/Floral Registration Certificate Application to coincide with the October 31st expiration date.~~]

(a) [~~(b)~~] Registration and renewal fees are:

(1) Class 1--$75. Includes businesses that sell, lease, or distribute, but do not grow nursery products and/or floral items, such as garden centers, grocery stores, landscape contractors, floral shops, interior decorators, and street vendors.

(2) Class 2--$110. Includes permanently located businesses that sell, lease, or distribute, nursery products and/or floral items and have a growing area of 435,600 square feet (ten acres) or less.

(3) Class 3--$145. Includes permanently located businesses that sell, lease, or distribute, nursery products and/or floral items and have a growing area of 435,601 - 871,200 square feet (in excess of ten acres to twenty acres).

(4) Class 4--$180. Includes permanently located businesses that sell, lease, or distribute nursery products and/or floral items and have a growing area of 871,201 square feet or more (over twenty acres).

(5) Class M--$180. Includes businesses that sell, lease, or distribute nursery products and/or floral items at temporary markets such as flea markets, arts and craft shows, plant or flower shows, or other temporary markets other than that described in subsection (c) [~~(d)~~] of this section. Class M registrants must obtain an event permit for each day nursery products and/or floral items are sold. Thirty event permits are provided at no additional cost under this registration. One event permit equals one day (or any portion of a 24 hour period) at one location. Selling nursery products and/or floral items for any portion of a 24-hour period constitutes the use of one event permit. [~~The fee for a Class M registration certificate will not be prorated.~~] Additional event permits may be purchased in blocks of 10 permits at a cost of $50 per block. There will be no limit on the number of blocks that can be purchased.

(b) [~~(c)~~] Class 1, 2, 3, and 4 certificate holders may obtain up to ten event permits at no additional cost under a registration to sell, barter, lease, or distribute nursery products and/or floral items at trade shows, garden shows, or other horticultural exhibits. Additional event permits may be purchased in blocks of ten permits at the cost of $50 per block. There will be no limit on the number of blocks that can be purchased.

(c) [~~(d)~~] Neither registration with the department nor event permits are required for participation in trade shows, garden shows, or other horticultural exhibits, so long as nursery products and/or floral items are not sold, bartered, leased, or distributed from stock located on the premises of the show or exhibit.

(d) [~~(e)~~] The fees provided in this section are applicable to the extent that they do not conflict with Chapter 2, Subchapter B of this title (relating to Consolidated Licenses).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200502982
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION

The Railroad Commission of Texas proposes amendments to §15.105, relating to Definitions; §15.125, relating to Application; §15.140, relating to Rebate Amount; Minimum Efficiency Factor or Performance Standard; §15.150, relating to Assignment of Rebate; §15.155, relating to Compliance; §15.160, relating to Complaints; §15.205, relating to Definitions; §15.305, relating to Definitions; and §15.405, relating to Definitions. The Commission proposes the amendments to incorporate provisions related to grant-funded rebate and incentive programs and to clarify certain administrative and procedural provisions.

In §15.105, relating to Definitions, the Commission proposes to amend the definitions of "application," to include a reference to a propane equipment supplier; "available funds," to include funds available from gifts and grants; and "safety inspection," to include a reference to a propane equipment supplier. This change would apply to programs such as the Commission's grant-funded low-NOx forklift initiative program, in which a propane equipment supplier rather than a propane dealer co-signs a consumer's application. The Commission also proposes new definitions of "installation date," as the date on which propane service for eligible equipment is established, i.e., the date the gas is turned on, and "propane equipment supplier," as a Railroad Commission LP-gas licensee, company representative or operations supervisor who sells, leases or services eligible equipment to or for consumers; who has completed and submitted the form prescribed by the Commission to participate in a rebate or incentive program as a propane equipment supplier; and who is a regular or potential supplier of eligible equipment to an applicant. The Commission also proposes to amend the definition of "propane dealer" to correct the name of the administrative unit of the Commission that licenses LP-gas companies and maintains records of their company representatives and operations supervisors.

In §15.125, relating to Application, the Commission proposes to amend subsection (a) to include a reference to a propane equipment supplier. The Commission also proposes to amend subsection (c) to clarify that applications for rebates or incentives will be considered in the order they are received and paid in the order of their installation dates. In addition, the Commission proposes to add a new subsection (d) to clarify that a rebate or incentive will be paid out of funds appropriated for the fiscal year in which the installation date occurs, unless the Commission obligates or reserves funds from a different fiscal year to pay rebates or incentives. The Commission proposes to amend current subsection (e), proposed to be redesignated as subsection (f), by adding a sentence clarifying that it is the installation date that determines whether funds are available and the rebate or incentive amount in effect, and to re-designate former subsections (d), (e), (f) and (g) as (e), (f), (g) and (h), respectively.

In §15.140, relating to Rebate Amount; Minimum Efficiency Factor or Performance Standard, the Commission proposes to amend subsection (a) to clarify that the amount of a rebate or incentive paid on an approved application is the amount that is in effect on the installation date rather than on the date the application is approved.

In §15.150, relating to Assignment of Rebate, the Commission proposes to add a reference to a propane equipment supplier, to allow a consumer to assign a rebate or incentive to a propane equipment supplier as well as to a propane dealer. This change would apply to programs such as the Commission's grant-funded low-NOx forklift initiative program, in which a propane equipment supplier rather than a propane dealer co-signs a consumer's application. The Commission also proposes to amend this section to specify that the rebate amount assigned is the amount in effect on the installation date rather than on the date the application is approved.

In §15.155, relating to Compliance, the Commission proposes to amend subsections (a) and (b) by subjecting a participating propane equipment supplier to the same sanctions as an applicant or propane dealer who submits false information or otherwise violates program rules.

In §15.160, relating to Complaints, the Commission proposes to amend subsection (b) by correcting the name of the Railroad Commission section that handles complaints that an installation does not comply with the Commission's LP-gas safety rules.

In §§15.205, 15.305, and 15.405, the Commission proposes to correct the name of the section of the Commission that handles certain LP-gas activities.

Dan Kelly, Director, Alternative Fuels Education and Research Division, has determined that for the first five years that the proposed amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as amended. Participation in all of the division's consumer rebate and incentive programs is voluntary, and the amendments as proposed represent minor administrative changes that current staff can implement without additional resources.

Mr. Kelly has also determined that there will be no cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses. Participation in all of the division's consumer rebate and incentive programs is voluntary, and the proposed changes would require no additional expenditures of time or money by individuals and companies choosing to participate in the programs.

Mr. Kelly has also determined that the public benefit anticipated as a result of enforcing or administering the sections as amended will be enhanced applicability of the consumer rebate program rules to grant-funded incentive programs such as the low-NOx forklift initiative, as well as greater clarity and improved communication to consumers, propane dealers and propane equipment suppliers of the rules governing administration of the Commission's LP-gas rebate and incentive programs.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291 or AFRED Marketing and Public Education Director Heather Ball at (512) 463-7359. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER B. PROPANE CONSUMER REBATE PROGRAM

16 TAC §§15.105, 15.125, 15.140, 15.150, 15.155, 15.160

The Commission proposes the amendments under the Texas Natural Resources Code, §113.241, which authorizes the Commission to adopt all necessary rules relating to the purposes of Texas Natural Resources Code, Chapter 113, Subchapter I, and activities regarding the use of LP-gas and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state; §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state; and §113.246, which requires the Commission to adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this subchapter.

Statutory authority: Texas Natural Resources Code, §§113.241, 113.243, 113.2435, and 113.246.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on July 22, 2005.

§15.105. Definitions.

The following words and terms, when used in this chapter (relating to the Alternative Fuels Research and Education Division) shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Application--That set of forms prescribed by the commission for the purpose of applying for and/or assigning a rebate and participating in the rebate program as a propane dealer or propane equipment supplier, including all required supporting documentation.

(3) Available funds--Money available in the Alternative Fuels Research and Education Fund Account No. 101--General Revenue Dedicated, or its successor, in the state treasury, consisting of fees charged under Texas Natural Resources Code, Chapter 113, Subchapter I; the penalties for the late payment of the fee charged under Texas Natural Resources Code, Chapter 113, Subchapter I; [~~and~~] interest earned on amounts in the fund account; and funds available from gifts and grants related to rebate and incentive programs for eligible equipment.

(4) - (9) (No change.)

(10) Installation date--The date on which propane service for eligible equipment is established.

(11) [~~(10)~~] Person--An individual, sole proprietorship, partnership, corporation or other legal entity.

(12) [~~(11)~~] Propane--Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113.

(13) [~~(12)~~] Propane dealer--A person who:

(A) has been issued a current Category E license from the Gas Services Division, License and Permit [~~LP-Gas~~] Section of the commission, or is an active company representative or operations supervisor on file with the [~~Gas Services Division, LP-Gas~~] Section; and

(B) operates or manages a retail business, including any branch outlet or outlets, delivering odorized propane to consumers; and

(C) has completed and submitted the form prescribed by the commission for dealer participation in the rebate program; and

(D) is a regular supplier or a potential regular supplier of propane to an applicant.

(14) Propane equipment supplier--A person who:

(A) has been issued a current Category L or other applicable LP-gas license from the Gas Services Division, License and Permit Section of the commission, or is an active company representative or operations supervisor on file with the Section; and

(B) operates or manages a retail business, including any branch outlet or outlets, selling, leasing or servicing eligible equipment to or for consumers; and

(C) has completed and submitted the form prescribed by the commission for propane equipment supplier participation in a rebate or incentive program; and

(D) is a regular supplier or a potential regular supplier of eligible equipment to an applicant.

(15) [~~(13)~~] Safety inspection--An on-site inspection, including any necessary pressure tests, of an operating eligible installation by a propane dealer, [~~or~~] a propane dealer's designated agent, a propane equipment supplier, or a propane equipment supplier's designated agent for the purpose of verifying that the LP-gas system, including all equipment, is or was installed in compliance with the propane consumer rebate program rules and with all applicable commission LP-gas safety rules and is in safe operating condition.

§15.125. Application.

(a) Forms. Application for a rebate shall be made by a consumer on forms prescribed for that purpose by the commission. The application for a rebate consists of a one- or two-page form, depending on the type of rebate, verifying the equipment for which the rebate is being sought. The form may require, for example, the make, model, and serial number of the eligible equipment installed or being replaced; the date and physical address of the installation; the applicant's name, address, and telephone number; and the participating propane marketer's or propane equipment supplier's name, address, telephone number, and Railroad Commission LP-Gas license number. The form requires the signature of the applicant and the Company Representative and, for certain rebate amounts, the applicant's tax identification number or social security number. The required documentation must show that the equipment for which the rebate is being sought is installed and operating in the State of Texas in compliance with Railroad Commission requirements.

(b) (No change.)

(c) Priority. Applications shall be considered on a first-come, first-served basis according to the receipt dates of complete and correct applications. Priority for payment shall be determined by the installation dates recorded on complete and correct applications.

(d) Allocation of payment to fiscal year. The installation date shall determine the fiscal year appropriation from which a rebate or incentive is paid. The commission may obligate or reserve funds to pay a rebate or incentive from funds of a fiscal year other than that in which the installation date occurs.

(e) [~~(d)~~] Acceptance. Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application for a rebate on domestic equipment, such as an appliance, must be received at the Commission no later than 30 days following the date of the eligible installation to be eligible for a rebate. An application for a rebate on a motor vehicle,

industrial lift truck, or other industrial equipment must be received at the Commission no later than 60 days following the date of the eligible installation to be eligible for a rebate. Applications may be mailed or hand-delivered to the Railroad Commission of Texas, Alternative Fuels Research and Education Division, 1701 North Congress Avenue, Room 11-170O, P.O. Box 12967, Austin, Texas 78711-2967. Applications may not be submitted electronically or by facsimile transmission (FAX).

(f) [~~(e)~~] Installation date. Applications must pertain to eligible installations made not earlier than the effective date of this rule and not later than the program termination date. The installation date is the date that determines whether funds are available and the rebate or incentive amount that is in effect.

(g) [~~(f)~~] Completeness. Applicants must furnish completely and correctly all information required on the official rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by the division.

(h) [~~(g)~~] Incomplete applications. Applicants have 30 days from the date the division sends notice to correct any errors or omissions on the application. If a complete, correct application is not received in the division within 30 days after notice has been sent, the application shall be void.

§15.140. Rebate Amount; Minimum Efficiency Factor or Performance Standard.

(a) The commission shall establish the rebate amount and may establish a minimum energy efficiency factor or other performance standard, as applicable, for an eligible installation. The commission may change this amount or performance standard at any time. If the commission changes the rebate amount or performance standard, an applicant whose application is approved will receive the amount that is in effect on the installation date of [~~for~~] the eligible installation [~~at the time of approval of the application~~].

(b) (No change.)

§15.150. Assignment of Rebate.

The commission may authorize payment of a rebate to a propane dealer or propane equipment supplier only by assignment from a consumer. Rebate amounts assigned shall be those in effect on the installation date of eligible equipment [~~at the time an application is approved~~]. A consumer may apply to assign a rebate to a propane dealer or propane equipment supplier by completing and submitting the form prescribed for that purpose by the commission. A propane dealer, propane equipment supplier, or applicant who submits false information pertaining to the assignment of a rebate is subject to criminal and civil penalties under §15.165 of this title (relating to Penalties).

§15.155. Compliance.

(a) An applicant, [~~or~~] propane dealer or propane equipment supplier may be suspended from or declared ineligible to participate in the rebate program if, in the judgment of the division director, the applicant, [~~or~~] dealer or equipment supplier has submitted false information or otherwise violated rebate program rules.

(b) Within 30 days after the division director mails a notice of suspension or ineligibility to an applicant, [~~or~~] propane dealer or equipment supplier, the applicant, [~~or~~] propane dealer or equipment supplier may appeal the suspension or declaration of ineligibility in writing to the commission. Actions taken by the commission with respect to such appeals are final.

§15.160. Complaints.

(a) (No change.)

(b) Complaints that an installation does not comply with the commission's LP-gas safety rules should be sent in writing to the assistant director of the Gas Services Division, License and Permit [~~LP-Gas~~] Section of the commission at the same address.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200502984
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER C. MEDIA REBATE PROGRAM

16 TAC §15.205

The Commission proposes the amendments under the Texas Natural Resources Code, §113.241, which authorizes the Commission to adopt all necessary rules relating to the purposes of Texas Natural Resources Code, Chapter 113, Subchapter I, and activities regarding the use of LP-gas and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state; §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state; and §113.246, which requires the Commission to adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this subchapter.

Statutory authority: Texas Natural Resources Code, §§113.241, 113.243, 113.2435, and 113.246.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on July 22, 2005.

§15.205. Definitions.

The following words and terms, when used in this subchapter, relating to the Alternative Fuels Research and Education Division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Propane dealer--A person who:

(A) has been issued a current Category E license from the Gas Services Division, License and Permit [~~LP-Gas~~] Section of the commission, or is an active company representative or operations supervisor on file with the [~~LP-Gas~~] Section; and

(B) - (C) (No change.)

(11) Retail propane delivery truck--Any bobtail truck, semitrailer, or other motor vehicle equipped with an LP-gas cargo container and each trailer, semitrailer, or other motor vehicle used principally for transporting LP-gas in portable containers that:

(A) (No change.)

(B) is currently registered with the Gas Services Division, License and Permit [~~LP-Gas~~] Section of the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 22, 2005.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER D. HIGHWAY SIGNAGE REBATE PROGRAM

16 TAC §15.305

The Commission proposes the amendments under the Texas Natural Resources Code, §113.241, which authorizes the Commission to adopt all necessary rules relating to the purposes of Texas Natural Resources Code, Chapter 113, Subchapter I, and activities regarding the use of LP-gas and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state; §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state; and §113.246, which requires the Commission to adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this subchapter.

Statutory authority: Texas Natural Resources Code, §§113.241, 113.243, 113.2435, and 113.246.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on July 22, 2005.

§15.305. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Eligible propane and/or natural gas outlet--A retail motor fuel outlet that is:

(A) (No change.)

(B) licensed by the commission's Gas Services Division, License and Permit [~~LP-Gas~~] Section; and

(C) (No change.)

(11) - (14) (No change.)

(15) Owner or operator of a propane and/or natural gas motor fuel outlet open to the motoring public--A person who:

(A) has been issued a current Category E, G, I or J LPG license or a current Category 3 or 5 CNG license from the Gas Services Division, License and Permit [~~LP-Gas~~] Section, of the commission, or is an active company representative or operations supervisor on file with the [~~Gas Services Division, LP-Gas~~] Section; and

(B) - (C) (No change.)

(16) - (17) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200502986
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER E. MANUFACTURED HOUSING INCENTIVE PROGRAM

16 TAC §15.405

The Commission proposes the amendments under the Texas Natural Resources Code, §113.241, which authorizes the Commission to adopt all necessary rules relating to the purposes of Texas Natural Resources Code, Chapter 113, Subchapter I, and activities regarding the use of LP-gas and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state; §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state; and §113.246, which requires the Commission to adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this subchapter.

Statutory authority: Texas Natural Resources Code, §§113.241, 113.243, 113.2435, and 113.246.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on July 22, 2005.

§15.405. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (14) (No change.)

(15) Propane dealer--A person who:

(A) has been issued a current Category E license from the Gas Services Division, License and Permit [~~LP-Gas~~] Section, of the commission, or is an active company representative or operations supervisor on file with the [~~Gas Services Division, LP-Gas~~] Section; and

(B) operates or manages a retail business, including any branch outlet or outlets, delivering odorized propane to consumers.

(16) - (17) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.65

The State Board of Education (SBOE) proposes an amendment to §33.65, concerning the Texas Permanent School Fund (PSF). Section 33.65 establishes provisions for the administration of the guarantee program for school district bonds. The proposed amendment would modify the administration of the PSF bond guarantee program. Changes to this rule are prompted by the need to clarify the current application process and to act on advice of legal counsel regarding the amount of capacity to be held in reserve.

Texas Education Code (TEC), §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the guaranteed bond program as authorized in TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. Section 33.65 is the rule the SBOE adopted to implement the program. TEC, §45.053, limits the amount of bonds that can be guaranteed and requires an annual report to determine whether the amount of bonds guaranteed is within the limit. In November 2004, the SBOE adopted changes to the rule because the capacity of the fund to guarantee bonds was at its limit, prompting the need to limit access to the program. These rule changes took effect December 5, 2004. Further revisions are necessary to clarify the administration of the program and to increase the amount of capacity held in reserve based on the advice of legal counsel.

19 TAC §33.65 establishes the administration of the guarantee bond program, definitions applicable to the program, data sources used for the purposes of prioritization, and provisions related to application processing, including refunding issues, estimates of available capacity, and capacity reserved for emergencies; school district applications for guarantees, including commissioner review of applicants; limitations on the total amounts of bonds that may be guaranteed under the program; allocation of specific holdings of the PSF; defeasement of bonds; issuance of bonds; payments; guarantee restrictions; and transition for certain applications.

The proposed amendment to 19 TAC §33.65 would clarify the treatment of applications for the guarantee for which there remains insufficient capacity to guarantee fully and increase the amount of capacity that is held in reserve. In addition, the proposed amendment would clarify the types of bonds which are eligible for a guarantee. Specifically, the proposed amendment includes the following changes.

Language regarding the deadline by which to receive applications would be added to subsection (b)(3). New language would be added to subsection (b) to define new money and refunding issues and to clarify the eligibility of combination issues. In subsection (d)(3), language would be added to subparagraph (B) to clarify refunding issues eligible for guarantee and new subparagraph (E) would be added regarding refunding transactions. Language regarding the amount of capacity to be held in reserve for emergencies and the treatment of applications for which capacity is insufficient to fully guarantee the proposed bond issue would be added to subsection (d)(5). Language regarding the time period to receive bond approval from the Office of the Attorney General would be added to subsection (d)(7). Subsection (d)(7) would also be modified by adding new subparagraph (D) to specify the requirement that bonds not be represented as guaranteed until the date of the letter granting approval. New paragraph (3) would be added to subsection (f) to specify that the eligibility of bonds to receive guarantee is limited to new money, refunding, and combination issues. Subsection (n) regarding transitional provisions would be deleted.

Joe Wisnoski, deputy associate commissioner for school finance and fiscal analysis, has determined that for the first five-year period the amendment is in effect there are no anticipated costs to the state as a result of enforcing or administering the amendment related to these modifications of policies that guide the administration of the guaranteed bond program. In terms of impact on local governments, the need to create a larger reserve would reduce the capacity of the fund to guarantee bond issues, which may create a greater need on the part of districts to purchase private bond insurance. Potential costs to districts related to the purchase of private bond insurance is impossible to estimate because the costs are driven by the unique circumstances of school districts that propose to issue bonds, including the market's assessment of the district's financial condition and the proposed bond issue.

Mr. Wisnoski has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment is that the PSF bond guarantee program provides low-cost bond insurance to school districts in Texas and ensures that the bonds issued by school districts under this program will be rated AAA in the bond market. This superior bond rating allows districts to market their bonds at the lowest possible interest rates and thus reduces the long-term costs of the bonds for school districts and taxpayers. There

will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under TEC, Chapter 45, Subchapter C.

The amendment implements the Texas Education Code, §7.102(c)(33), and §45.053.

§33.65. Guarantee Program for School District Bonds.

(a) Statutory provision. The commissioner of education shall administer the guarantee program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for school district bonds.

(1) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as set forth in the final official statement or the final bond order for the bonds most recently issued by the district, if the district has outstanding bonded indebtedness.

(A) The annual debt service does not include the amount of debt service to be paid on the bonds for which the reservation is sought.

(B) The debt service amounts used in this calculation for variable rate bonds will be that which is published in the final official statement.

(2) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds.

(3) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be received by the Texas Education Agency division responsible for state funding by 5:00 p.m. on the last business day of the month in order to be considered in that month's application processing.

(4) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type maintenance of tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by TEC, §45.003.

(5) Refunding issue--An issuance of bonds for the purpose of refunding bonds that are supported by bond taxes as defined by TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds that were authorized by a bond election under TEC, §45.003.

(6) [~~(4)~~] Combination issue--An issuance of bonds for which an application is filed for a guarantee that includes both a new money portion and a refunding portion, as permitted by Texas Government Code, Chapter 1207. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(7) [~~(5)~~] Average daily attendance (ADA)--Total refined average daily attendance as defined by §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook).

(8) [~~(6)~~] Enrollment growth--Growth in student enrollment that has occurred over the previous five years.

(c) Data sources.

(1) The following data sources shall be used for purposes of prioritization:

(A) projected ADA as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller shall be used;

(C) annual debt service, as defined in subsection (b)(1) of this section, due during the fiscal year in which the proposed debt will be issued. The amount of debt service on the proposed bond issue will not be included in the calculation of annual debt service; and

(D) enrollment increases over the previous five years shall be determined using Public Education Information Management System (PEIMS) submission data available at the time of application.

(2) The commissioner may consider adjustments to data values determined to be erroneous prior to the deadline for receipt of applications for that application cycle.

(d) Application processing. To facilitate prioritization of applications for the guarantee, all applications received during a calendar month will be held until the tenth business day of the subsequent month. On the tenth business day of each month, the commissioner of education will announce the results of the prioritization described in paragraph (5) of this subsection and process applications for the guarantee up to the available capacity, subject to the requirements of this subsection.

(1) The school district may not submit an application for a guarantee prior to the successful passage of an authorizing proposition.

(2) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (e) of this section.

(3) Refunding issues must comply with the following requirements in order to retain eligibility for the guarantee for the refunding bonds.

(A) The district must be accredited.

(B) The bonds to be refunded must have been previously guaranteed by the Permanent School Fund (PSF). Only refunding issues as defined in subsection (b)(5) of this section are eligible for the guarantee.

(C) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and must not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings shall be computed at the true interest cost of the refunding bonds.

(D) In the event that a district files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the eligibility requirements described in this subsection. The district making the application must present data to the commissioner that demonstrates compliance for both the new money portion of the issue and the refunding portion of the issue.

(E) The refunding transaction must comply with the provisions of paragraph (7)(A) and (C) of this subsection.

(4) The commissioner of education will estimate the available capacity of the Texas Permanent School Fund (PSF) on a monthly basis.

(5) The State Board of Education (SBOE) shall establish an amount of capacity to be held in reserve of no less than 5.0% of the fund's capacity. Guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches [~~98% of~~] its net capacity to guarantee bonds , as determined by subtracting the amount to be held in reserve from the total available capacity. The reserved [~~remaining~~] capacity can be used to award guarantees [~~is to be held in reserve~~] for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in the TEC, §44.031(h).

(A) The amount to be held in reserve may be increased by a majority vote of the SBOE based on changes in the asset allocation and risk in the portfolio and unrealized gains in the portfolio.

(B) Guarantees will be awarded to applicants based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process.

(6) An application received after the application deadline shall be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(7) Each district that submits a valid application shall be notified of the application status within ten business days of the end of the month following the application deadline.

(A) If a district is awarded a guarantee, the bonds must be approved by the Office of the Attorney General within 120 [~~180~~] days of the date of the letter granting the approval of the guarantee [~~application deadline~~].

(B) If a district does not receive a guarantee or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the district may re-apply in a subsequent month. Applications that were denied a guarantee will not be retained for consideration in subsequent months.

(C) If the bonds are not approved by the Office of the Attorney General within 120 [~~180~~] days of the date of the letter granting the approval of the guarantee [~~application deadline~~], the commissioner shall consider the application withdrawn and the district must re-apply for a guarantee.

(D) Districts may not represent the bonds as guaranteed for the purposes of pricing or marketing the bonds prior to the date of the letter granting approval of the guarantee.

(e) Application for the guarantee.

(1) Districts shall apply to the commissioner of education for the guarantee of eligible bonds. The district shall submit, in a form specified by the commissioner, the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application shall be accompanied by a fee to be set by the commissioner and approved by the SBOE [~~State Board of Education (SBOE)~~].

(2) Under the TEC, §45.056, the commissioner shall investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for approval by the commissioner. The commissioner's review shall include the following:

(A) the purpose of the bond issue;

(B) the district's accreditation status and compliance with statutes and rules of the Texas Education Agency; and

(C) the district's financial status and stability, including approval of the bonds by the attorney general under the provisions of the TEC, §45.0031 and §45.005.

(f) Limitations on access to the guarantee.

(1) The following limitations apply to bonds for which the election authorizing the issuance of bonds was called after July 15, 2004.

(2) The commissioner shall limit approval of the guarantee to a district with less than $1,250 of annual debt service per student in ADA at the time of the application for a guarantee. The limitation shall not apply to school districts that have enrollment that is 25% higher than the enrollment reported five years earlier, based on PEIMS data available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section.

(3) The eligibility of bonds to receive the guarantee is limited to those new money, refunding, and combination issues as defined in subsection (b)(4)-(6) of this section.

(g) Allocation of specific holdings. If necessary to successfully operate the guarantee program, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation shall not prejudice the right of the SBOE to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE shall ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation shall not affect any rights of the bond holders under law.

(h) Defeasement. The guarantee shall be completely removed when bonds guaranteed by this program are defeased, and such a provision shall be specifically stated in the bond resolution. If bonds guaranteed by this program are defeased, the district shall notify the commissioner in writing within ten calendar days of the action.

(i) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds shall certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.

(j) Bonds guaranteed before December 31, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner shall cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also shall direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.

(k) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner shall cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also shall direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.

(l) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment upon a tender of such bonds in accordance with the terms of the bonds do not constitute matured principal and interest payments.

(m) Guarantee restrictions. The guarantee provided for eligible bonds in accordance with the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

~~[(n) Transitional provisions. Applications with a sale date beyond December 31, 2004, or received after October 8, 2004, will be subject to the provisions of this section as amended to be effective December 5, 2004. This subsection expires effective September 1, 2005.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.25

The State Board of Education (SBOE) proposes an amendment to §74.25, concerning curriculum requirements. The section establishes provisions relating to high school credit for college courses. The proposed amendment would change the process through which students receive high school graduation credit for college courses.

Adopted to be effective September 1, 1996, 19 TAC §74.25 currently allows a school district board of trustees to adopt a policy that allows a student to be awarded credit toward high school graduation for completion of a college-level course. The rule requires that the course must be provided only by an institution of higher education that is accredited by one of several regional accrediting associations.

The rule currently establishes that to be eligible to enroll and be awarded credit toward state graduation requirements, a student must have the approval of the high school principal or other school official designated by the school district. The rule specifies that the course for which credit is awarded must provide advanced academic instruction beyond, or in greater depth than, the essential knowledge and skills for the equivalent high school course.

The proposed amendment would change the process for awarding high school graduation credit for completion of college courses. Language referring to a policy adopted by the school district board of trustees would be removed from subsection (a). In addition, language would be added to subsection (b) to require the acceptance and transferability of credit earned from an accredited institution of higher education toward state high school graduation requirements. Subsection (b) would also be revised to remove the requirement for prior approval of the high school principal or other designated school official.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be clarification of the provision providing students with additional options for completing high school graduation requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701,

(512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendment implements the Texas Education Code, §§7.102, 28.002, and 28.025.

§74.25. High School Credit for College Courses.

(a) Credit [~~A school district board of trustees may adopt a policy that allows a student to be awarded credit~~] toward high school graduation for completion of [~~completing~~] a college-level course shall be granted under this section only when the[~~. The~~] course is [~~must be~~] provided [~~only~~] by an institution of higher education that is accredited by one of the following regional accrediting associations:

(1) - (6) (No change.)

(b) Credit earned toward state graduation requirements by a student in an accredited institution of higher education within Texas shall be transferable and must be accepted by a school district in the state. [~~To be eligible to enroll and be awarded credit toward state graduation requirements, a student must have the approval of the high school principal or other school official designated by the school district.~~] The course for which credit is awarded must provide advanced academic instruction beyond, or in greater depth than, the essential knowledge and skills for the equivalent high school course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez
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CHAPTER 101. ASSESSMENT
SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.23

The State Board of Education (SBOE) proposes an amendment to §101.23, concerning student assessment. The section sets forth the SBOE-determined level of performance considered to be satisfactory on assessment instruments. The proposed amendment would set the performance standards for the Grade 8 science assessment. The Texas Education Code (TEC), §39.024(a), authorizes the SBOE to set the standard for satisfactory performance on the Texas Assessment of Knowledge and Skills (TAKS).

The 2001 federal No Child Left Behind Act requires that science be assessed in each of the following grade spans: Grades 3 - 5, 6 - 9, and 10 - 12 by the 2007 - 2008 school year. At the state level, Senate Bill 1108 and House Bill 411, passed by the 78th Texas Legislature in 2003, mandated the development of a Grade 8 science assessment to be administered to students no later than the 2006 - 2007 school year. TEC, §39.023(a)(6), was amended by this legislation to add the Grade 8 science assessment and requires that results from the assessment be included in the accountability system no later than the 2008 - 2009 school year. Currently, TAKS measures the statewide curriculum in science at Grades 5, 10, and 11. Development activities were undertaken for the new assessment, and the Grade 8 science assessment was field-tested both in a paper-and-pencil format and in an online format in April 2005.

When the TAKS program was first developed, a national Technical Advisory Committee (TAC) was assembled to advise the SBOE on standard-setting activities. This committee was composed of prominent educational testing experts with experience in standard setting in other major testing programs across the country. The current TAC met in February 2005 to discuss standard setting for the Grade 8 science assessment. At this meeting the TAC discussed the plan for conducting standard setting, a summary of the methods for standard setting, impact data, and ways to examine recommended standards in comparison with standards in other Grade 8 subjects and other grade level science assessments. At the April 2005 SBOE meeting, the SBOE approved the proposed standard-setting plan for the TAKS Grade 8 science assessment. As set forth in the standard-setting plan approved by the SBOE at its April 2005 meeting, a panel of experts was convened to evaluate data for the Grade 8 science assessment and develop recommendations on the performance standards for that assessment. During its July 2005 meeting, the SBOE reviewed and considered panel recommendations on performance standards for the TAKS Grade 8 science assessment. Impact data as well as other relevant information from the spring 2005 field test was also presented at the July 2005 meeting to assist the SBOE with determining the performance standards.

The SBOE took action that would establish a two-year phase-in period for the "met standard" level using the standard error of measurement (SEM) statistic to determine the standards during the phase-in period. For spring 2006, the passing standard would be set at 2 SEM below the panel recommendation, moving up to 1 SEM below the next year, and then to the panel recommendation in spring 2008.

The proposed amendment to §101.23 would add a new subsection (b), including a new figure, identifying the performance standards established by the SBOE for the TAKS Grade 8 science assessment. This figure reflects the TAKS scale scores required to achieve the "met standard" and "commended performance" at the standards equivalent to the panel recommendations, as well as those scale score standards at 1 SEM and 2 SEM below the panel recommendation for the "met standard" level. This is in accordance with the phase-in schedule established by the SBOE for full implementation of the TAKS Grade 8 science assessment performance standards. Language is also included in the proposed new subsection (b) and figure to maintain equivalent standards in future test forms.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the addition of the middle school science assessment augmenting the Texas student assessment program's capacity to provide Texas students, schools, and the public with an accurate gauge of students' academic progress in learning the key components of the state-mandated curriculum. The middle school science test, which will assess Texas Essential Knowledge and Skills student expectations taught at Grades 6, 7, and 8, will also serve as a bridge between the elementary Grade 5 TAKS science test and the Grade 10 and exit-level TAKS science tests. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program, and, specifically, §39.024(a), which authorizes the State Board of Education to set the standard for satisfactory performance on the TAKS.

The amendment implements the TEC, Chapter 39, Subchapter B.

§101.23. Performance Standards.

(a) (No change.)

(b) As established in subsection (a) of this section, the SBOE shall determine the level of performance considered satisfactory on assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the TAKS Grade 8 science assessment. The "commended" and "met" standards are based on the spring 2006 operational test form. Future forms of the test will be equated by the Texas Education Agency to the 2006 assessment in order to ensure that equivalent standards are maintained.
Figure: 19 TAC §101.23(b)

(c) [~~(b)~~] The alternative assessment of academic skills will measure annual growth based on appropriate expectations for each student receiving special education services, as determined by the student's admission, review, and dismissal (ARD) committee in accordance with criteria established by the commissioner of education as required by the TEC, §39.024(a).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503037

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Earliest possible date of adoption: September 4, 2005
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CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

SUBCHAPTER A. ELEMENTARY

19 TAC §§111.11 - 111.17

The State Board of Education (SBOE) proposes amendments to §§111.11-111.17, concerning the Texas Essential Knowledge and Skills (TEKS) for mathematics. The sections establish the curriculum standards for elementary mathematics, Kindergarten-Grade 5. The proposed amendments would refine and align elementary mathematics TEKS, for implementation beginning with the 2006-2007 school year.

Following a November 2003 directive from the SBOE to provide a schedule for reviewing the TEKS, Texas Education Agency (TEA) staff prepared a proposed 2004-2005 TEKS review calendar. The TEKS review process is designed to follow the same timeline as the textbook adoption process.

TEA staff has begun the review process for the elementary mathematics TEKS. A work group of teachers, central office staff, and university personnel was assembled to review these TEKS. After the work group refined and aligned the elementary mathematics TEKS, the draft revisions were placed on the TEA web site in the form of a survey to collect feedback from the public for 30 days beginning in mid-December 2004. A summary of the survey results was provided to the SBOE at the April meeting. The SBOE was also provided with an explanation of the changes for alignment and refinement of the TEKS during the April 2005 meeting.

The draft revisions have been provided to a review panel consisting of highly regarded mathematics experts. Feedback from mathematics experts and from SBOE members at the April meeting have been incorporated into the proposed amendments to the elementary mathematics TEKS. Examples of the proposed amendments include revisions for precision in language, mathematical correctness, developmental appropriateness, vertical alignment, and parallel language from Kindergarten-Grade 5.

The SBOE recently concluded the review process for the secondary mathematics TEKS in the areas of mathematics, Grades 6-8 (including Grade 6 Spanish mathematics); Algebra I and II; Geometry; Precalculus; and Mathematical Models with Applications. During the February 2005 meeting, the SBOE adopted amendments that refine and align the TEKS for secondary mathematics and specified that implementation begin with the 2006-2007 school year. The proposed implementation for the refined and aligned elementary mathematics TEKS would begin with school year 2006-2007 to coincide with the effective date of the amended secondary mathematics TEKS.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendments are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or

administering the amendments. Normal business costs would be associated with the TEKS updating process for the Texas Education Agency, including staff travel, meeting accommodations, and production and dissemination of documents.

Dr. Barnes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would include better alignment of the TEKS and coordination of the TEKS revision with the textbook adoption process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendments implement the Texas Education Code, §7.102, and §28.002.

§111.11. Implementation of Texas Essential Knowledge and Skills for Mathematics, Grades K-5.

The provisions of this subchapter shall be implemented by school districts beginning with the 2006-2007 school year. [~~September 1, 1998, and at that time shall supersede §75.27(a)-(f) of this title (relating to Mathematics).~~]

§111.12. Mathematics, Kindergarten.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Kindergarten are developing whole-number concepts and using patterns and sorting to explore number, data, and shape.

(2) Throughout mathematics in Kindergarten-Grade 2, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use numbers in ordering, labeling, and expressing quantities and relationships to solve problems and translate informal language into mathematical language and symbols. Students use [~~patterns to describe~~] objects to create and identify patterns and use those patterns to [~~,~~] express relationships, make predictions, and solve problems as they build an understanding of number, operation, shape, and space. Students progress from informal to formal [~~use informal~~] language [~~and observation of geometric properties~~] to describe two- and three-dimensional geometric figures [~~shapes, solids,~~] and likenesses [~~locations~~] in the physical world. Students [~~and~~] begin to develop measurement concepts as they identify and compare attributes of objects and situations. Students collect, organize, and display data and use information from graphs to answer questions, make summary statements, and make informal predictions based on their experiences.

(3) Throughout mathematics in Kindergarten-Grade 2, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Kindergarten-Grade 2 use basic number sense to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 2, students know basic addition and subtraction facts and are using them to work flexibly, efficiently, and accurately with numbers during addition and subtraction computation.

(4) [~~(3)~~] Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Kindergarten-Grade 2, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student uses numbers to name quantities. The student is expected to:

(A) use one-to-one correspondence and language such as more than, same number as, or two less than to describe relative sizes of sets of concrete objects;

(B) use sets of concrete objects to represent quantities given in verbal or written form (through 20 [~~9~~]); and

(C) use numbers to describe how many objects are in a set (through 20) using verbal and symbolic descriptions.

(2) Number, operation, and quantitative reasoning. The student describes order of events or objects. The student is expected to:

(A) use language such as before or after to describe relative position in a sequence of events or objects; and

(B) name the ordinal positions in a sequence such as first, second, third, etc.

(3) Number, operation, and quantitative reasoning. The student recognizes that there are quantities less than a whole. The student is expected to:

(A) share a whole by separating it into two equal parts; and

(B) explain why a given part is half of the whole.

(4) Number, operation, and quantitative reasoning. The student models addition (joining) and subtraction (separating). The student is expected to model and create addition and subtraction problems in real situations with concrete objects.

(5) Patterns, relationships, and algebraic thinking. The student identifies, extends, and creates patterns. The student is expected to identify, extend, and create patterns of sounds, physical movement, and concrete objects.

(6) Patterns, relationships, and algebraic thinking. The student uses patterns to make predictions. The student is expected to:

(A) use patterns to predict what comes next, including cause-and-effect relationships; and

(B) count by ones to 100.

(7) Geometry and spatial reasoning. The student describes the relative positions of objects. The student is expected to:

(A) describe one object in relation to another using informal language such as over, under, above, and below; and

(B) place an object in a specified position.

(8) Geometry and spatial reasoning. The student uses attributes to determine how objects are alike and different. The student is expected to:

(A) describe and identify an object by its attributes using informal language;

(B) compare two objects based on their attributes; and

(C) sort a variety of objects including two- and three-dimensional geometric figures according to their attributes and describe how the objects are sorted [~~those groups are formed~~].

(9) Geometry and spatial reasoning. The student recognizes attributes [~~characteristics~~] of two- and three-dimensional geometric figures [~~shapes and solids~~]. The student is expected to:

(A) describe and compare the attributes of real-life objects such as balls, boxes, cans, and cones or models of three-dimensional geometric figures [~~solids~~];

(B) recognize shapes in real-life three-dimensional geometric figures [~~objects~~] or models of three-dimensional geometric figures [~~solids~~]; and

(C) describe, identify, and compare circles, triangles, [~~and~~] rectangles, and [~~including~~] squares (a special type of rectangle).

(10) Measurement. The student directly compares the [~~uses~~] attributes of [~~such as~~] length, area, weight/mass, [~~weight, or~~] capacity, and/or relative temperature [~~to compare and order objects~~]. The student uses comparative language to solve problems and answer questions. The student is expected to:

(A) compare and order two or three concrete objects according to length (longer/shorter than, or the same); [~~(shorter or longer), capacity (holds more or holds less), or weight (lighter or heavier); and~~]

(B) compare the areas of two flat surfaces of two-dimensional figures (covers more, covers less, or covers the same);

[~~(B) find concrete objects that are about the same as, less than, or greater than a given object according to length, capacity, or weight.~~]

(C) compare two containers according to capacity (holds more, holds less, or holds the same);

(D) compare two objects according to weight/mass (heavier than, lighter than or equal to); and

(E) compare situations or objects according to relative temperature (hotter/colder than, or the same as).

(11) Measurement. The student uses time [~~and temperature~~] to describe, compare, and order events [~~,~~] and situations [~~, and/or objects~~]. The student is expected to:

[~~(A) compare situations or objects according to temperature such as hotter or colder;~~]

(A) [~~(B)~~] compare events according to duration such as more time than or less time than;

(B) [~~(C)~~] sequence events (up to three); and

(C) [~~(D)~~] read a calendar using days, weeks, and months.

(12) Probability and statistics. The student constructs and uses graphs of real objects or pictures to answer questions. The student is expected to:

(A) construct graphs using real objects or pictures in order to answer questions; and

(B) use information from a graph of real objects or pictures in order to answer questions.

(13) Underlying processes and mathematical tools. The student applies Kindergarten mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify mathematics in everyday situations;

(B) solve problems [~~use a problem-solving model,~~] with guidance [~~,~~] that incorporates the processes of understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving strategy including drawing a picture, looking for a pattern, systematic guessing and checking, or acting it out in order to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(14) Underlying processes and mathematical tools. The student communicates about Kindergarten mathematics using informal language. The student is expected to:

(A) communicate mathematical ideas [~~explain and record observations~~] using objects, words, pictures, numbers, and technology; and

(B) relate everyday language to mathematical language and symbols.

(15) Underlying processes and mathematical tools. The student uses logical reasoning [~~to make sense of his or her world~~]. The student is expected to justify [~~reason and support~~] his or her thinking using objects, words, pictures, numbers, and technology.

§111.13. Mathematics, Grade 1.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Grade 1 are building number sense through number relationships, adding and subtracting whole numbers, [~~and~~] organizing and analyzing data, and working with two- and three-dimensional geometric figures.

(2) Throughout mathematics in Kindergarten-Grade 2, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use numbers in ordering, labeling, and expressing quantities and relationships to solve problems and translate informal language into mathematical language and symbols. Students use [~~patterns to describe~~] objects to create and identify patterns and use those patterns to [~~,~~] express relationships, make predictions, and solve problems as they build an understanding of number, operation, shape, and space. Students progress from informal to formal [~~use informal~~] language [~~and observation of geometric properties~~] to describe two- and three-dimensional geometric figures [~~shapes, solids,~~] and likenesses [~~locations~~] in the physical world. Students [~~and~~] begin to develop measurement concepts as they identify and compare attributes of objects

and situations. Students collect, organize, and display data and use information from graphs to answer questions, make summary statements, and make informal predictions based on their experiences.

(3) Throughout mathematics in Kindergarten-Grade 2, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Kindergarten-Grade 2 use basic number sense to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 2, students know basic addition and subtraction facts and are using them to work flexibly, efficiently, and accurately with numbers during addition and subtraction computation.

(4) [~~(3)~~] Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Kindergarten-Grade 2, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student uses whole numbers to describe and compare quantities. The student is expected to:

(A) compare and order whole numbers up to 99 (less than, greater than, or equal to) using sets of concrete objects and pictorial models;

(B) create sets of tens and ones using concrete objects to describe, compare, and order whole numbers;

(C) identify individual coins by name and value and describe relationships among them; and

[~~(C) use words and numbers to describe the values of individual coins such as penny, nickel, dime, and quarter and their relationships; and~~]

(D) read and write numbers to 99 to describe sets of concrete objects.

(2) Number, operation, and quantitative reasoning. The student uses pairs of whole numbers to describe fractional parts of whole objects or sets of objects. The student is expected to:

(A) separate [~~share~~] a whole [~~by separating it~~] into two, three, or four equal parts and use appropriate language to describe the parts such as three out of four equal parts; and

(B) use appropriate language to describe part of a set such as three out of the eight crayons are red.

(3) Number, operation, and quantitative reasoning. The student recognizes and solves problems in addition and subtraction situations. The student is expected to:

(A) model and create addition and subtraction problem situations with concrete objects and write corresponding number sentences; and

(B) use concrete and pictorial models to [~~learn and~~] apply basic addition and subtraction facts (up to 9 + 9 = 18 and 18 - 9 = 9) [~~(sums to 18) using concrete models~~].

(4) Patterns, relationships, and algebraic thinking. The student uses repeating patterns and additive patterns to make predictions. The student is expected to identify, describe, and extend concrete and pictorial patterns in order to make predictions and solve problems. [~~:~~]

[~~(A) identify, describe, and extend concrete and pictorial patterns in order to make predictions and solve problems; and~~]

[~~(B) use patterns to skip count by twos, fives, and tens.~~]

(5) Patterns, relationships, and algebraic thinking. The student recognizes patterns in numbers and operations. The student is expected to:

(A) use patterns to skip count by twos, fives, and tens;

(B) [~~(A)~~] find patterns in numbers, including odd and even;

(C) [~~(B)~~] compare and order whole numbers using place value; [~~and~~]

(D) use patterns to develop strategies to solve basic addition and basic subtraction problems; and

(E) [~~(C)~~] identify patterns in related addition and subtraction sentences (fact families for sums to 18) such as 2 + 3 = 5, 3 + 2 = 5, 5 - 2 = 3, and 5 - 3 = 2.

(6) Geometry and spatial reasoning. The student uses attributes to identify two- and three-dimensional geometric figures. The student compares and contrasts two- and three-dimensional geometric figures or both [~~, compare, and contrast shapes and solids~~]. The student is expected to:

[~~(A) describe and identify objects in order to sort them according to a given attribute using informal language;~~]

(A) [~~(B)~~] describe and identify two-dimensional geometric figures, including circles, triangles, [~~and~~] rectangles, and [~~including~~] squares (a special type of rectangle); [~~, and describe the shape of balls, boxes, cans, and cones; and~~]

(B) describe and identify three-dimensional geometric figures, including spheres, rectangular prisms (including cubes), cylinders, and cones;

(C) describe and identify two- and three-dimensional geometric figures in order to sort them according to a given attribute using informal and formal language; and

(D) [~~(C)~~] use concrete models to combine two-dimensional geometric figures [~~shapes~~] to make new geometric figures [~~shapes using concrete models~~].

(7) Measurement. The student directly compares the attributes of length, area, weight/mass, capacity, and temperature. The student uses comparative language to solve problems and answer questions. The student selects and uses nonstandard units to describe length [~~, weight, and capacity~~]. The student is expected to:

(A) estimate and measure length [~~, capacity, and weight of objects~~] using nonstandard units such as paper clips or sides of color tiles; [~~and~~]

(B) compare and order two or more concrete objects according to length (from longest to shortest);

(C) [~~(B)~~] describe the relationship between the size of the unit and the number of units needed to measure the length of an object; [~~in a measurement.~~]

(D) compare and order the area of two or more two-dimensional surfaces (from covers the most to covers the least);

(E) compare and order two or more containers according to capacity (from holds the most to holds the least);

(F) compare and order two or more objects according to weight/mass (from heaviest to lightest); and

(G) compare and order two or more objects according to relative temperature (from hottest to coldest).

(8) Measurement. The student understands that time [~~and temperature~~] can be measured. The student uses time to describe and compare situations. The student is expected to:

[~~(A) recognize temperatures such as a hot day or a cold day;~~]

[~~(B) describe time on a clock using hours and half hours; and~~]

(A) [~~(C)~~] order three or more events according to duration; and [~~by how much time they take.~~]

(B) read time to the hour and half-hour using analog and digital clocks.

(9) Probability and statistics. The student displays data in an organized form. The student is expected to:

(A) collect and sort data; and

(B) use organized data to construct real-object graphs, picture graphs, and bar-type graphs.

(10) Probability and statistics. The student uses information from organized data. The student is expected to:

(A) draw conclusions and answer questions using information organized in real-object graphs, picture graphs, and bar-type graphs; and

(B) identify events as certain or impossible such as drawing a red crayon from a bag of green crayons.

(11) Underlying processes and mathematical tools. The student applies Grade 1 mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify mathematics in everyday situations;

(B) solve problems [~~use a problem-solving model,~~] with guidance [~~as needed,~~] that incorporates the processes of understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving plan or strategy including drawing a picture, looking for a pattern, systematic guessing and checking, or acting it out in order to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(12) Underlying processes and mathematical tools. The student communicates about Grade 1 mathematics using informal language. The student is expected to:

(A) explain and record observations using objects, words, pictures, numbers, and technology; and

(B) relate informal language to mathematical language and symbols.

(13) Underlying processes and mathematical tools. The student uses logical reasoning [~~to make sense of his or her world~~]. The student is expected to justify [~~reason and support~~] his or her thinking using objects, words, pictures, numbers, and technology.

§111.14. Mathematics, Grade 2.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Grade 2 are developing an understanding of the base-ten place value system, comparing and ordering whole numbers, applying addition and subtraction, and using measurement processes.

(2) Throughout mathematics in Kindergarten-Grade 2, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use numbers in ordering, labeling, and expressing quantities and relationships to solve problems and translate informal language into mathematical language and symbols. Students use [~~patterns to describe~~] objects to create and identify patterns and use those patterns to [~~,~~] express relationships, make predictions, and solve problems as they build an understanding of number, operation, shape, and space. Students progress from [~~use~~] informal to formal language [~~and observation of geometric properties~~] to describe two- and three-dimensional geometric figures [~~shapes, solids,~~] and likenesses [~~locations~~] in the physical world. Students [~~and~~] begin to develop measurement concepts as they identify and compare attributes of objects and situations. Students collect, organize, and display data and use information from graphs to answer questions, make summary statements, and make informal predictions based on their experiences.

(3) Throughout mathematics in Kindergarten-Grade 2, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Kindergarten-Grade 2 use basic number sense to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 2, students know basic addition and subtraction facts and are using them to work flexibly, efficiently, and accurately with numbers during addition and subtraction computation.

(4) [~~(3)~~] Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Kindergarten-Grade 2, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student understands how place value is used to represent whole numbers. The student is expected to: [~~use concrete models to represent, compare, and order whole numbers (through 999), read the numbers, and record the comparisons using numbers and symbols (>, <,=).~~]

(A) use concrete models of hundreds, tens, and ones to represent a given whole number (up to 999) in various ways;

(B) use place value to read, write, and describe the value of whole numbers to 999; and

(C) use place value to compare and order whole numbers to 999 and record the comparisons using numbers and symbols (<,=, >).

(2) Number, operation, and quantitative reasoning. The student describes how fractions are used [~~uses fraction words~~] to name parts of whole objects or sets of objects. The student is expected to:

(A) use concrete models to represent and name fractional parts of a whole object (with denominators of 12 or less); [~~(not to exceed twelfths) when given a concrete representation; and~~]

(B) use concrete models to represent and name fractional parts of a set of objects (with denominators of 12 or less); and [(not to exceed twelfths) when given a concrete representation.]

(C) use concrete models to determine if a fractional part of a whole is closer to 0, 1/2, or 1.

(3) Number, operation, and quantitative reasoning. The student adds and subtracts whole numbers to solve problems. The student is expected to:

(A) recall and apply basic addition and subtraction facts ([sums] to 18);

(B) model addition and subtraction of two-digit numbers with objects, pictures, words, and numbers;

(C) [(B)] select addition or subtraction to [and] solve problems using two-digit numbers, whether or not regrouping is necessary; [and]

(D) [(C)] determine the value of a collection of coins up to [less than] one dollar; and [.]

(E) describe how the cent symbol, dollar symbol, and the decimal point are used to name the value of a collection of coins.

(4) Number, operation, and quantitative reasoning. The student models multiplication and division. The student is expected to:

(A) model, create, and describe multiplication situations in which equivalent sets of concrete objects are joined; and

(B) model, create, and describe division situations in which a set of concrete objects is separated into equivalent sets.

(5) Patterns, relationships, and algebraic thinking. The student uses patterns in numbers and operations. The student is expected to:

(A) find patterns in numbers such as in a 100s chart;

(B) use patterns in place value to compare and order whole numbers through 999; and

(C) use patterns and relationships to develop strategies to remember basic addition and subtraction facts. Determine patterns in related addition and subtraction number sentences (including fact families) such as 8 + 9 = 17, 9 + 8 = 17, 17 - 8 = 9, and 17 - 9 = 8. [; and]

[(D) solve subtraction problems related to addition facts (fact families) such as 8 + 9 = 17, 9 + 8 = 17, 17 - 8 = 9, and 17 - 9 = 8.]

(6) Patterns, relationships, and algebraic thinking. The student uses patterns to describe relationships and make predictions. The student is expected to:

(A) generate a list of paired numbers based on a real-life situation such as number of tricycles related to number of wheels;

(B) identify patterns in a list of related number pairs based on a real-life situation and extend the list; and

(C) identify, describe, and extend repeating and additive patterns to make predictions and solve problems.

(7) Geometry and spatial reasoning. The student uses attributes to identify two- and three-dimensional geometric figures. The student compares and contrasts two- and three-dimensional geometric figures or both [, compare, and contrast shapes and solids]. The student is expected to:

(A) describe [identify] attributes (the number of vertices, faces, edges, sides) of two- and three-dimensional geometric figures such as circles, polygons, spheres, cones, cylinders, prisms, and pyramids, etc. [any shape or solid];

(B) use attributes to describe how 2 [two]two-dimensional figures or 2 three-dimensional geometric figures [shapes or two solids] are alike or different; and

(C) cut two-dimensional geometric figures [shapes] apart and identify the new geometric figures formed [shapes made].

(8) Geometry and spatial reasoning. The student recognizes that [numbers can be represented by points on] a line can be used to represent a set of numbers and its properties. The student is expected to use whole numbers to locate and name points on a number line.

(9) Measurement. The student directly compares the attributes of length, area, weight/mass, and capacity, and uses comparative language to solve problems and answer questions. The student selects and uses nonstandard units to describe length, area, capacity, and weight/mass. The student recognizes and uses models that approximate standard units (from both SI, also known as metric, and customary systems) of length, weight/mass [weight], capacity, and time. The student is expected to:

(A) identify concrete models that approximate standard units of length and use them to measure length [, capacity, and weight];

(B) select a non-standard unit of measure such as square tiles to determine the area of a two-dimensional surface;

[(B) measure length, capacity, and weight using concrete models that approximate standard units; and]

(C) select a non-standard unit of measure such as a bathroom cup or a jar to determine the capacity of a given container; and

[(C) describe activities that take approximately one second, one minute, and one hour.]

(D) select a non-standard unit of measure such as beans or marbles to determine the weight/mass of a given object.

(10) Measurement. The student uses standard tools to estimate and measure time and temperature (in degrees Fahrenheit). The student is expected to:

(A) read a thermometer to gather data; [and]

(B) read and write times shown [describe time] on analog and digital clocks using five-minute increments; and [a clock using hours and minutes.]

(C) describe activities that take approximately one second, one minute, and one hour.

(11) Probability and statistics. The student organizes data to make it useful for interpreting information. The student is expected to:

(A) construct picture graphs and bar-type graphs;

(B) draw conclusions and answer questions based on picture graphs and bar-type graphs; and

(C) use data to describe events as more likely or less likely such as drawing a certain color crayon from a bag of seven red crayons and three green crayons.

(12) Underlying processes and mathematical tools. The student applies Grade 2 mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify the mathematics in everyday situations;

(B) solve problems with guidance [~~use a problem-solving model~~] that incorporates the processes of understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving plan or strategy including drawing a picture, looking for a pattern, systematic guessing and checking, or acting it out in order to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(13) Underlying processes and mathematical tools. The student communicates about Grade 2 mathematics using informal language. The student is expected to:

(A) explain and record observations using objects, words, pictures, numbers, and technology; and

(B) relate informal language to mathematical language and symbols.

(14) Underlying processes and mathematical tools. The student uses logical reasoning [~~to make sense of his or her world~~]. The student is expected to justify [~~reason and support~~] his or her thinking using objects, words, pictures, numbers, and technology.

§111.15. Mathematics, Grade 3.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Grade 3 are multiplying and dividing whole numbers, connecting fraction symbols to fractional quantities, and standardizing language and procedures in geometry and measurement.

(2) Throughout mathematics in Grades 3-5, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use algorithms for addition, subtraction, multiplication, and division as generalizations connected to concrete experiences; and they concretely develop basic concepts of fractions and decimals. Students use appropriate language and organizational structures such as tables and charts to represent and communicate relationships, make predictions, and solve problems. Students select and use formal language to describe their reasoning as they identify, compare, and classify two- or three-dimensional geometric figures [~~shapes and solids~~]; and they use numbers, standard units, and measurement tools to describe and compare objects, make estimates, and solve application problems. Students organize data, choose an appropriate method to display the data, and interpret the data to make decisions and predictions and solve problems.

(3) Throughout mathematics in Grades 3-5, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Grades 3-5 use knowledge of the base-ten place value system to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 5, students know basic addition, subtraction, multiplication, and division facts and are using them to work flexibly, efficiently, and accurately with numbers during addition, subtraction, multiplication, and division computation.

(4) [~~(3)~~] Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Grades 3-5, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student uses place value to communicate about increasingly large whole numbers in verbal and written form, including money. The student is expected to:

(A) use place value to read, write (in symbols and words), and describe the value of whole numbers through 999,999;

(B) use place value to compare and order whole numbers through 9,999; and

(C) determine the value of a collection of coins and bills.

(2) Number, operation, and quantitative reasoning. The student uses fraction names and symbols (with denominators of 12 or less) to describe fractional parts of whole objects or sets of objects. The student is expected to:

(A) construct concrete models of fractions;

(B) compare fractional parts of whole objects or sets of objects in a problem situation using concrete models;

(C) use fraction names and symbols to describe fractional parts of whole objects or sets of objects [~~with denominators of 12 or less~~]; and

(D) construct concrete models of equivalent fractions for fractional parts of whole objects.

(3) Number, operation, and quantitative reasoning. The student adds and subtracts to solve meaningful problems involving whole numbers. The student is expected to:

(A) model addition and subtraction using pictures, words, and numbers; and

(B) select addition or subtraction and use the operation to solve problems involving whole numbers through 999.

(4) Number, operation, and quantitative reasoning. The student recognizes and solves problems in multiplication and division situations. The student is expected to:

(A) learn and apply multiplication facts through 12 by 12 [~~the tens~~] using concrete models and objects;

(B) solve and record multiplication problems (up to two digits times one digit) [~~(one-digit multiplier)~~]; and

(C) use models to solve division problems and use number sentences to record the solutions.

(5) Number, operation, and quantitative reasoning. The student estimates to determine reasonable results. The student is expected to:

(A) round whole numbers [~~two-digit numbers~~] to the nearest ten or hundred to approximate reasonable results in problem situations [~~and three-digit numbers to the nearest hundred~~]; and

(B) use strategies including rounding and compatible numbers to estimate solutions to addition and subtraction problems.

[~~(B) estimate sums and differences beyond basic facts.~~]

(6) Patterns, relationships, and algebraic thinking. The student uses patterns to solve problems. The student is expected to:

(A) identify and extend whole-number and geometric patterns to make predictions and solve problems;

(B) identify patterns in multiplication facts using concrete objects, pictorial models, or technology; and

(C) identify patterns in related multiplication and division sentences (fact families) such as 2 x 3 = 6, 3 x 2 = 6, 6 ÷ 2 = 3, 6 ÷ 3 = 2.

(7) Patterns, relationships, and algebraic thinking. The student uses lists, tables, and charts to express patterns and relationships. The student is expected to:

(A) generate a table of paired numbers based on a real-life situation such as insects and legs; and

(B) identify and describe patterns in a table of related number pairs based on a meaningful problem [~~real-life situation~~] and extend the table.

(8) Geometry and spatial reasoning. The student uses formal geometric vocabulary. The student is expected to identify, classify, and [~~name,~~] describe two- and three-dimensional geometric figures by their attributes. The student compares two-dimensional figures, three-dimensional figures, or both by their attributes [~~, and compare shapes and solids~~] using formal geometry [~~geometric~~] vocabulary.

(9) Geometry and spatial reasoning. The student recognizes congruence and symmetry. The student is expected to:

(A) identify congruent two-dimensional figures [~~shapes~~];

(B) create two-dimensional figures [~~shapes~~] with lines of symmetry using concrete models and technology; and

(C) identify lines of symmetry in two-dimensional geometric figures [~~shapes~~].

(10) Geometry and spatial reasoning. The student recognizes that [~~numbers can be represented by points on~~] a line can be used to represent numbers and fractions and their properties and relationships. The student is expected to locate and name points on a number line using whole numbers and fractions, including [~~such as~~] halves and fourths.

(11) Measurement. The student directly compares the attributes of length, area, weight/mass, and capacity, and uses comparative language to solve problems and answer questions. The student selects and uses standard units to describe length, area, capacity/volume, and weight/mass.

[~~(11) Measurement. The student selects and uses appropriate units and procedures to measure length and area.~~] The student is expected to:

(A) use linear measurement tools to estimate and measure lengths using standard units [~~such as inch, foot, yard, centimeter, decimeter, and meter~~];

(B) use standard units [~~linear measure~~] to find the perimeter of a shape; [~~and~~]

(C) use concrete and pictorial models of square units to determine the area of two-dimensional surfaces; [~~shapes.~~]

(D) identify concrete models that approximate standard units of weight/mass and use them to measure weight/mass;

(E) identify concrete models that approximate standard units for capacity and use them to measure capacity; and

(F) use concrete models that approximate cubic units to determine the volume of a given container or other three-dimensional geometric figure.

(12) Measurement. The student reads and writes time and measures [~~time and~~] temperature in degrees Fahrenheit to solve problems. The student is expected to:

(A) use a thermometer to measure temperature; and

(B) [~~(A)~~] tell and write time shown on analog [~~traditional~~] and digital clocks. [~~, and~~]

[~~(B) use a thermometer to measure temperature.~~]

[~~(13) Measurement. The student applies measurement concepts. The student is expected to measure to solve problems involving length, area, temperature, and time.~~]

(13) [~~(14)~~] Probability and statistics. The student solves problems by collecting, organizing, displaying, and interpreting sets of data. The student is expected to:

(A) collect, organize, record, and display data in pictographs and bar graphs where each picture or cell might represent more than one piece of data;

(B) interpret information from pictographs and bar graphs; and

(C) use data to describe events as more likely than, less likely than, or equally likely as.

(14) [~~(15)~~] Underlying processes and mathematical tools. The student applies Grade 3 mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify the mathematics in everyday situations;

(B) solve problems [~~use a problem-solving model~~] that incorporate [~~incorporates~~] understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving plan or strategy, including drawing a picture, looking for a pattern, systematic guessing and checking, acting it out, making a table, working a simpler problem, or working backwards to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(15) [~~(16)~~] Underlying processes and mathematical tools. The student communicates about Grade 3 mathematics using informal language. The student is expected to:

(A) explain and record observations using objects, words, pictures, numbers, and technology; and

(B) relate informal language to mathematical language and symbols.

(16) [~~(17)~~] Underlying processes and mathematical tools. The student uses logical reasoning [~~to make sense of his or her world~~]. The student is expected to:

(A) make generalizations from patterns or sets of examples and nonexamples; and

(B) justify why an answer is reasonable and explain the solution process.

§111.16. Mathematics, Grade 4.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Grade 4 are comparing and ordering fractions and decimals, applying multiplication and division, and developing ideas related to congruence and symmetry.

(2) Throughout mathematics in Grades 3-5, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use algorithms for addition, subtraction, multiplication, and division as generalizations connected to concrete experiences; and they concretely develop basic concepts of fractions and decimals. Students use appropriate language and organizational structures such as tables and charts to represent and communicate relationships, make predictions, and solve problems. Students select and use formal language to describe their reasoning as they identify, compare, and classify two- or three-dimensional geometric figures [~~shapes and solids~~]; and they use numbers, standard units, and measurement tools to describe and compare objects, make estimates, and solve application problems. Students organize data, choose an appropriate method to display the data, and interpret the data to make decisions and predictions and solve problems.

(3) Throughout mathematics in Grades 3-5, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Grades 3-5 use knowledge of the base-ten place value system to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 5, students know basic addition, subtraction, multiplication, and division facts and are using them to work flexibly, efficiently, and accurately with numbers during addition, subtraction, multiplication, and division computation.

(4) [~~(3)~~] Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Grades 3-5, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student uses place value to represent whole numbers and decimals. The student is expected to:

(A) use place value to read, write, compare, and order whole numbers through the millions place; and

(B) use place value to read, write, compare, and order decimals involving tenths and hundredths, including money, using concrete objects and pictorial models.

(2) Number, operation, and quantitative reasoning. The student describes and compares fractional parts of whole objects or sets of objects. The student is expected to:

(A) use concrete objects and pictorial models to generate equivalent fractions [~~using concrete and pictorial models~~];

(B) model fraction quantities greater than one using concrete objects and pictorial models [~~materials and pictures~~];

(C) compare and order fractions using concrete objects and pictorial models; and

(D) relate decimals to fractions that name tenths and hundredths using concrete objects and pictorial models.

(3) Number, operation, and quantitative reasoning. The student adds and subtracts to solve meaningful problems involving whole numbers and decimals. The student is expected to:

(A) use addition and subtraction to solve problems involving whole numbers; and

(B) add and subtract decimals to the hundredths place using concrete objects and pictorial models.

(4) Number, operation, and quantitative reasoning. The student multiplies and divides to solve meaningful problems involving whole numbers. The student is expected to:

(A) model factors and products using arrays and area models;

(B) represent multiplication and division situations in picture, word, and number form;

(C) recall and apply multiplication facts through 12 x 12;

(D) use multiplication to solve problems (no more than two digits times two digits without technology) [~~involving two-digit numbers~~]; and

(E) use division to solve problems (no more than one-digit divisors and three-digit dividends without technology) [~~involving one-digit divisors~~].

(5) Number, operation, and quantitative reasoning. The student estimates to determine reasonable results. The student is expected to:

(A) round whole numbers to the nearest ten, hundred, or thousand to approximate reasonable results in problem situations; and

(B) use strategies including rounding and compatible numbers to estimate solutions to multiplication and division problems.

[~~(B) estimate a product or quotient beyond basic facts.~~]

(6) Patterns, relationships, and algebraic thinking. The student uses patterns in multiplication and division. The student is expected to:

(A) use patterns and relationships to develop strategies to remember basic multiplication and division facts (such as the patterns in related multiplication and division number sentences (fact families) such as 9 x 9 = 81 and 81 ÷ 9 = 9); and

[~~(B) solve division problems related to multiplication facts (fact families) such as 9 x 9 = 81 and 81 ÷ 9 = 9; and~~]

(B) [~~(C)~~] use patterns to multiply by 10 and 100.

(7) Patterns, relationships, and algebraic thinking. The student uses organizational structures to analyze and describe patterns and relationships. The student is expected to describe the relationship between two sets of related data such as ordered pairs in a table.

(8) Geometry and spatial reasoning. The student identifies and describes attributes of geometric figures [~~lines, shapes, and solids~~] using formal geometric language. The student is expected to:

(A) identify and describe right, acute, and obtuse angles;

(B) identify and describe [~~models of~~] parallel and intersecting (including perpendicular) lines using concrete objects and pictorial models; and

(C) use essential attributes to define two- and three-dimensional geometric figures.

[(C) describe shapes and solids in terms of vertices, edges, and faces.]

(9) Geometry and spatial reasoning. The student connects transformations to congruence and symmetry. The student is expected to:

(A) demonstrate translations, reflections, and rotations using concrete models;

(B) use translations, reflections, and rotations to verify that two shapes are congruent; and

(C) use reflections to verify that a shape has symmetry.

(10) Geometry and spatial reasoning. The student recognizes the connection between numbers and their properties and points on a [number] line. The student is expected to locate and name points on a number line using whole numbers, fractions such as halves and fourths, and decimals such as tenths.

(11) Measurement. The student applies measurement concepts. The student is expected to estimate and measure to solve problems involving length (including perimeter) and area. The student uses measurement tools to measure capacity/volume and weight/mass. The student is expected to:

(A) estimate and use measurement tools to determine length (including perimeter), area, capacity and weight/mass using standard units SI (metric) and customary;

(B) perform simple conversions between different units of length, between different units of capacity, and between different units of weight within the customary measurement system;

(C) use concrete models of standard cubic units to measure volume;

(D) estimate volume in cubic units; and

(E) explain the difference between weight and mass.

[(11) Measurement. The student selects and uses appropriate units and procedures to measure weight and capacity. The student is expected to:]

[(A) estimate and measure weight using standard units including ounces, pounds, grams, and kilograms; and]

[(B) estimate and measure capacity using standard units including milliliters, liters, cups, pints, quarts, and gallons.]

(12) Measurement. The student applies measurement concepts. The student measures time and temperature (in degrees Fahrenheit and Celsius). The student is expected to: [measure to solve problems involving length, including perimeter, time, temperature, and area.]

(A) use a thermometer to measure temperature and changes in temperature; and

(B) use tools such as a clock with gears or a stopwatch to solve problems involving elapsed time.

(13) Probability and statistics. The student solves problems by collecting, organizing, displaying, and interpreting sets of data. The student is expected to:

(A) use concrete objects or pictures to make generalizations about determining all possible combinations of a given set of data or of objects in a problem situation; and

[(A) list all possible outcomes of a probability experiment such as tossing a coin;]

[(B) use a pair of numbers to compare favorable outcomes to all possible outcomes such as four heads out of six tosses of a coin; and]

(B) [(C)] interpret bar graphs.

(14) Underlying processes and mathematical tools. The student applies Grade 4 mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify the mathematics in everyday situations;

(B) solve problems [use a problem-solving model] that incorporate [incorporates] understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving plan or strategy, including drawing a picture, looking for a pattern, systematic guessing and checking, acting it out, making a table, working a simpler problem, or working backwards to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(15) Underlying processes and mathematical tools. The student communicates about Grade 4 mathematics using informal language. The student is expected to:

(A) explain and record observations using objects, words, pictures, numbers, and technology; and

(B) relate informal language to mathematical language and symbols.

(16) Underlying processes and mathematical tools. The student uses logical reasoning [to make sense of his or her world]. The student is expected to:

(A) make generalizations from patterns or sets of examples and nonexamples; and

(B) justify why an answer is reasonable and explain the solution process.

§111.17. Mathematics, Grade 5.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Grade 5 are comparing and contrasting lengths, areas [area], and volumes [volume] of two- or three-dimensional geometric figures [geometric shapes and solids]; representing and interpreting data in graphs, charts, and tables; and applying whole number operations in a variety of contexts.

(2) Throughout mathematics in Grades 3-5, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use algorithms for addition, subtraction, multiplication, and division as generalizations connected to concrete experiences; and they concretely develop basic concepts of fractions and decimals. Students use appropriate language and organizational structures such as tables and charts to represent and communicate relationships, make predictions, and solve problems. Students select and use formal language to describe their reasoning as they identify, compare, and classify two- or three-dimensional geometric figures [shapes and solids]; and they use numbers, standard units, and measurement tools to describe and compare objects, make estimates, and solve application problems. Students

organize data, choose an appropriate method to display the data, and interpret the data to make decisions and predictions and solve problems.

(3) Throughout mathematics in Grades 3-5, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Grades 3-5 use knowledge of the base-ten place value system to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 5, students know basic addition, subtraction, multiplication, and division facts and are using them to work flexibly, efficiently, and accurately with numbers during addition, subtraction, multiplication, and division computation.

(4) [~~(3)~~] Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Grades 3-5, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student uses place value to represent whole numbers and decimals. The student is expected to:

(A) use place value to read, write, compare, and order whole numbers through the billions place; and

(B) use place value to read, write, compare, and order decimals through the thousandths place.

(2) Number, operation, and quantitative reasoning. The student uses fractions in problem-solving situations. The student is expected to:

(A) generate a fraction equivalent to a given fraction such as 1/2 and 3/6 or 4/12 and 1/3;

[~~(A) generate equivalent fractions;~~]

(B) generate a mixed number equivalent to a given improper fraction or generate an improper fraction equivalent to a given mixed number;

(C) [~~(B)~~] compare two fractional quantities in problem-solving situations using a variety of methods, including common denominators; and

(D) [~~(C)~~] use models to relate decimals to fractions that name tenths, hundredths, and thousandths.

(3) Number, operation, and quantitative reasoning. The student adds, subtracts, multiplies, and divides to solve meaningful problems. The student is expected to:

(A) use addition and subtraction to solve problems involving whole numbers and decimals;

(B) use multiplication to solve problems involving whole numbers (no more than three digits times two digits without technology);

(C) use division to solve problems involving whole numbers (no more than two-digit divisors and three-digit dividends without technology), including interpreting the remainder within a given context;

(D) identify [~~prime factors of a whole number and~~] common factors of a set of whole numbers; and

(E) model situations using [~~and record~~] addition and/or [~~and~~] subtraction involving [~~of~~] fractions with like denominators using concrete objects, pictures, words, and numbers [~~in problem-solving situations~~].

(4) Number, operation, and quantitative reasoning. The student estimates to determine reasonable results. The student is expected to use strategies, including rounding and compatible numbers to estimate solutions to addition, subtraction, multiplication, and division problems. [~~:~~]

[~~(A) round whole numbers and decimals through tenths to approximate reasonable results in problem situations; and~~]

[~~(B) estimate to solve problems where exact answers are not required.~~]

(5) Patterns, relationships, and algebraic thinking. The student makes generalizations based on observed patterns and relationships. The student is expected to:

[~~(A) use concrete objects or pictures to make generalizations about determining all possible combinations;~~]

(A) [~~(B)~~] describe the relationship between sets of data in graphic organizers such as [~~use~~] lists, tables, charts, and diagrams [~~to find patterns and make generalizations such as a procedure for determining equivalent fractions~~]; and

(B) [~~(C)~~] identify prime and composite numbers using concrete objects, pictorial models, and patterns in factor pairs.

(6) Patterns, relationships, and algebraic thinking. The student describes relationships mathematically. The student is expected to select from and use diagrams and equations such as $y = 5 + 3$ [~~number sentences~~] to represent meaningful problem [~~real-life~~] situations.

(7) Geometry and spatial reasoning. The student generates geometric definitions using critical attributes. The student is expected to identify essential attributes including parallel, perpendicular, and congruent parts of two- and three-dimensional geometric figures. [~~:~~]

[~~(A) identify critical attributes including parallel, perpendicular, and congruent parts of geometric shapes and solids; and~~]

[~~(B) use critical attributes to define geometric shapes or solids.~~]

(8) Geometry and spatial reasoning. The student models transformations. The student is expected to:

(A) sketch the results of translations, rotations, and reflections on a Quadrant I coordinate grid; and

(B) identify [~~describe~~] the transformation that generates one figure from the other when given two congruent figures on a Quadrant I coordinate grid.

(9) Geometry and spatial reasoning. The student recognizes the connection between ordered pairs of numbers and locations of points on a plane. The student is expected to locate and name points on a coordinate grid using ordered pairs of whole numbers.

(10) Measurement. The student applies measurement concepts involving length (including perimeter), area, capacity/volume, and weight/mass to solve problems [~~selects and uses appropriate units and procedures to measure volume~~]. The student is expected to:

(A) perform simple conversions within the same measurement system (SI (metric) or customary);

[~~(A) measure volume using concrete models of cubic units; and~~]

(B) connect models for perimeter, area, and volume with their respective formulas; and

[(B) estimate volume in cubic units.]

(C) select and use appropriate units and formulas to measure length, perimeter, area, and volume.

(11) Measurement. The student applies measurement concepts. The student measures time and temperature (in degrees Fahrenheit and Celsius). The student is expected to:

(A) solve problems involving changes in temperature; and

[(A) measure to solve problems involving length (including perimeter), weight, capacity, time, temperature, and area; and]

(B) solve problems involving elapsed time.

[(B) describe numerical relationships between units of measure within the same measurement system such as an inch is one-twelfth of a foot.]

(12) Probability and statistics. The student describes and predicts the results of a probability experiment. The student is expected to:

(A) use fractions to describe the results of an experiment; [and]

(B) use experimental results to make predictions; and [.]

(C) list all possible outcomes of a probability experiment such as tossing a coin.

(13) Probability and statistics. The student solves problems by collecting, organizing, displaying, and interpreting sets of data. The student is expected to:

(A) use tables of related number pairs to make line graphs;

(B) describe characteristics of data presented in tables and graphs including median, mode, and range [the shape and spread of the data and the middle number]; and

(C) graph a given set of data using an appropriate graphical representation such as a picture or line graph.

(14) Underlying processes and mathematical tools. The student applies Grade 5 mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify the mathematics in everyday situations;

(B) solve problems [use a problem-solving model] that incorporate [incorporates] understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving plan or strategy, including drawing a picture, looking for a pattern, systematic guessing and checking, acting it out, making a table, working a simpler problem, or working backwards to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(15) Underlying processes and mathematical tools. The student communicates about Grade 5 mathematics using informal language. The student is expected to:

(A) explain and record observations using objects, words, pictures, numbers, and technology; and

(B) relate informal language to mathematical language and symbols.

(16) Underlying processes and mathematical tools. The student uses logical reasoning [to make sense of his or her world]. The student is expected to:

(A) make generalizations from patterns or sets of examples and nonexamples; and

(B) justify why an answer is reasonable and explain the solution process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 206. GUARANTEED STUDENT LOANS

22 TAC §206.1

The Texas Funeral Service Commission (commission) proposes new §206.1, concerning Default and Repayment Agreements.

The new section is proposed to comply with the requirements of Education Code, §57.491 which directs all regulatory agencies to adopt rules on this subject.

The new section describes instances when the commission will and will not issue new licenses or renew outstanding licenses when a licensee or applicant is in default on a guaranteed student loan or a repayment agreement.

O.C. "Chet" Robbins, Executive Director has determined that for the first five-year period the new section is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the proposed section.

Mr. Robbins has also determined that for each year of the first five-year period the new section is in effect, the public benefit anticipated as a result of enforcing the section will be eliminating redundancy. There will be no effect on large, small or micro-businesses. The anticipated economic costs to persons who are required to comply with this section will be no more nor less than the costs to the individuals before this new section becomes effective and there is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas

78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The new section is proposed under the authority of the Texas Occupations Code, §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651. The new section is also proposed under Education Code, §57.491 which directs all regulatory agencies to adopt rules on this subject.

No other statutes, articles, or codes are affected by the new section.

§206.1. Default and Repayment Agreements.

Applicability of Education Code. All individual license renewals are subject to Texas Education Code, §57.491 relating to defaults on guaranteed student loans and repayment agreements.

(1) The commission may issue an initial license to a person who is in default on a guaranteed student loan but shall not renew the license, unless the applicant furnishes a certification from the Texas Guaranteed Student Loan Corporation that the licensee has entered into a repayment plan on the loan or that the licensee is no longer in default on the loan.

(2) The commission shall not renew the license of a person who is in default on a guaranteed student loan, unless the renewal is the first renewal following the commission's receipt of notice of the licensee's default or the licensee has furnished the certification described in paragraph (1) of this section.

(3) The commission shall not renew the license of a person who defaults on a repayment agreement on a defaulted loan, unless the commission receives a certification that the licensee has entered into another repayment agreement or that the licensee is no longer in default.

(4) The commission shall give the licensee an opportunity for hearing before taking action concerning the non-renewal of a license for default on a guaranteed student loan or a repayment agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2005.

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O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 936-2466

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER X. PREFERRED PROVIDER PLANS

28 TAC §3.3703

The Texas Department of Insurance proposes an amendment to §3.3703, concerning insurer contracting arrangements with preferred providers. This amendment is necessary to implement Senate Bill (SB) 50 enacted during the 79th Regular Legislative Session. Consistent with SB 50, the amendment to §3.3703 requires that upon request from a preferred provider, an insurer shall include a provision in the provider contract providing that the insurer or the insurer's clearinghouse may not deny or refuse to process an electronic clean claim because the claim is submitted in a batch of claims that contains claims that are deficient. The proposed amendment includes the contracting requirement provided by SB 50 and adds further language regarding the meaning of a batch submission. The proposed language clarifies that the reference to a batch submission is a reference to existing federal standardized transactions and provides that a batch submission is a group of electronic claims which are submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. Although the department has, elsewhere in this edition of the *Texas Register*, proposed language regarding the meaning of batch submissions, insurers must avoid reading the language of SB 50 and the proposed language too narrowly. The language of the statute and the proposed amendment also apply to clean claims that are submitted "together with" claims that are deficient. This language is broader than the term "batch submission" and includes groups of claims that may or may not be properly classified as a batch submission for federal standardized transactions. Therefore, insurers should not inappropriately focus on whether claims that are submitted together are in a batch submission that meets the federal regulatory definition.

The department will consider the adoption of the proposed amendment in a public hearing under Docket No. 2615 scheduled for September 7, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be the implementation of SB 50, which gives preferred providers the ability to request that an insurer include a provision in the provider contract indicating that the insurer will not deny or refuse to process an otherwise clean claim submitted in a batch of claims that may contain deficient claims. This will give preferred providers increased notice of the obligations that an insurer has to process clean claims that are submitted in accordance with the process required by the insurer. Any cost to persons required to comply with this section for each year of the first five years the proposed section will be in effect is the result of enactment of SB 50 and not the result of the adoption, enforcement, or administration of this section. Because any potential costs are mandated by the statute and insurers should be able to include this language in provider contracts at the request of a preferred provider regardless of the size of the insurer, it would be neither legal nor feasible to waive or modify the requirements for insurers that are small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 6, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under Insurance Code §1301.0641 and §36.001. Section 1301.0641 provides that if requested by a preferred provider an insurer shall include a provision in the preferred provider's contract providing that the insurer or the insurer's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code §1301.0641

§3.3703. Contracting Requirements.

(a) An insurer marketing a preferred provider benefit plan must contract with physicians and health care providers to assure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the plan in a manner that assures both availability and accessibility of adequate personnel, specialty care, and facilities. Each contract must meet the following requirements:

(1) - (21) (No change.)

(22) Upon request by a preferred provider, an insurer shall include a provision in the preferred provider's contract providing that the insurer and the insurer's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. As used in this section, the term batch submission is a group of electronic claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. This paragraph applies to a contract entered into or renewed on or after January 1, 2006.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene C. Jarmon
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Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER J. PHYSICIAN AND PROVIDER CONTRACTS AND ARRANGEMENTS

28 TAC §11.901

The Texas Department of Insurance proposes amendments to §11.901 concerning health maintenance organization (HMO) contracting arrangements with participating physicians and providers. These amendments are necessary to implement Senate Bill (SB) 50 enacted during the 79th Regular Legislative Session. Consistent with SB 50, the amendments to §11.901 require that upon request from a preferred provider, an HMO shall include a provision in the physician's or provider's contract providing that the HMO or the HMO's clearinghouse may not deny or refuse to process an electronic clean claim because the claim is submitted in a batch of claims that contains claims that are deficient. The proposed amendment includes the contracting requirement provided by SB 50 and adds further language regarding the meaning of a batch submission. The proposed language clarifies that the reference to a batch submission is a reference to existing federal standardized transactions and provides that a batch submission is a group of electronic claims which are submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. Although the department has, elsewhere in this edition of the *Texas Register,* proposed language regarding the meaning of batch submissions, HMOs must avoid reading the language of SB 50 and the proposed language too narrowly. The language of the statute and the proposed amendment also apply to clean claims that are submitted "together with" claims that are deficient. This language is broader than the term "batch submission" and includes groups of claims that may or may not be properly classified as a batch submission for federal standardized transactions. Therefore, HMOs should not inappropriately focus on whether claims that are submitted together are in a batch submission that meets the federal regulatory definition.

The department will consider the adoption of the proposed amendments in a public hearing under Docket No. 2616 scheduled for September 7, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be the implementation of SB 50, which gives participating physicians and providers the ability to request that an HMO include a provision in the physician's or provider's contract indicating that the HMO will not deny or refuse to process an otherwise clean claim submitted in a batch of claims that may contain deficient claims. This will give physicians and providers increased notice of the obligations that an HMO has to process clean claims that are submitted in accordance with the process required by the HMO. Any cost to persons required to comply with this section for each year of the

first five years the proposed section will be in effect is the result of enactment of SB 50 and not the result of the adoption, enforcement, or administration of this section. Because any potential costs are mandated by the statute and HMOs should be able to include this language in physician and provider contracts at the request of a physician or provider regardless of the size of the HMO, it would be neither legal nor feasible to waive or modify the requirements for HMOs that are small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 6, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Insurance Code §§843.323 and 36.001. Section 843.323 provides that if requested by a preferred provider an HMO shall include a provision in the preferred provider's contract providing that the HMO or the HMO's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: §843.323

§11.901. Required Provisions.

(a) - (b) (No change.)

(c) Upon request by a participating physician or provider, an HMO shall include a provision in the physician's or provider's contract providing that the HMO and the HMO's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. As used in this section, the term batch submission is a group of electronic claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. This subsection applies to a contract entered into or renewed on or after January 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER R. UTILIZATION REVIEW AGENTS

28 TAC §§19.1703, 19.1723, 19.1724

The Texas Department of Insurance proposes amendments to §§19.1703, 19.1723, and 19.1724 concerning utilization review agents. These amendments are necessary to implement Senate Bill (SB) 51 (79th Regular Legislative Session), which in pertinent part establishes preauthorization and verification procedures for single service HMOs providing dental and routine vision services. The proposed amendments to §19.1703 add definitions for "routine vision services," consistent with the language of SB 51, and "single health care service plan." The proposed amendments to §19.1723 and §19.1724 change the required periods for the availability of personnel to receive and respond to requests for preauthorization and verification for single service HMOs providing dental and routine vision services. In addition, changes were made to §19.1723 and §19.1724(a) to update references and correct a typographical error.

The department will consider the adoption of the proposed amendments in a public hearing under Docket No. 2618 scheduled for September 7, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be more specific preauthorization and verification procedures for single service HMOs providing dental and routine vision services, as required by SB 51. Any cost to persons required to comply with these sections for each year of the first five years the proposed sections will be in effect is the result of the enactment of SB 51, and existing law, and not the result of the adoption, enforcement, or administration of the sections. SB 51 amends prompt pay laws that have been in effect since the enactment of Senate Bill (SB) 418 (78th Regular Legislative Session). Because these laws have applied to, among others, single service HMOs providing dental and routine vision services, such HMOs have been required to have systems and procedures in place to comply with the preauthorization and verification procedures. Because the preauthorization and verification procedures should have been in place for all HMOs, and because SB 51 merely changes the required periods for the availability of personnel to receive and respond to requests for preauthorization and verification for all single service HMOs providing dental and routine vision services, there is no additional cost to such HMOs for complying with these procedures. In addition, waiver of the rules could result in a competitive disadvantage for those HMOs to whom the waiver would apply. As a result of this possibility, and because SB 51 applies to all single service HMOs providing dental or routine vision services, it would be neither legal nor feasible to waive or modify the requirements for single service HMOs that are small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 6, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Mail

Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under Insurance Code §§843.347(h) and (i), 843.348(i) and (j), and 36.001. Sections 843.347(h) and (i) and 843.348(i) and (j) provide that an HMO providing routine vision services as a single health care service plan or providing dental health care services as a single health care service plan is not required to comply with the timeframes for receiving and responding to requests for preauthorization and verification set forth for other carriers, but must instead have appropriate personnel reasonably available between 8:00 a.m. and 5:00 p.m. central time Monday through Friday to receive and respond to such requests; have a telephone system capable of accepting and recording incoming requests during other times; and respond to those off-hour requests no later than the next business day after the call is received. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following sections are affected by this proposal: §843.347 and §843.348

§19.1703. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (32) (No change.)

(33) Routine vision services--A routine annual or biennial eye examination to determine ocular health and refractive conditions that may include provision of glasses or contact lenses.

(34) [~~(33)~~] Screening criteria--The written policies, decision rules, medical protocols, or guides used by the utilization review agent as part of the utilization review process (e.g., appropriateness evaluation protocol (AEP) and intensity of service, severity of illness, discharge, and appropriateness screens (ISD-A)).

(35) Single health care service plan--A single health care service plan as defined by Insurance Code Section 843.002(26).

(36) [~~(34)~~] Utilization review--A system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within the state. Utilization review shall not include elective requests for clarification of coverage.

(37) [~~(35)~~] Utilization review agent--An entity that conducts utilization review, for an employer with employees in this state who are covered under a health benefit plan or health insurance policy, a payor, or an administrator.

(38) [~~(36)~~] Utilization review plan--The screening criteria and utilization review procedures of a utilization review agent.

(39) [~~(37)~~] Verification--A guarantee by an HMO or preferred provider carrier that the HMO or preferred provider carrier will pay for proposed medical care or health care services if the services are rendered within the required timeframe to the patient for whom the services are proposed. The term includes pre-certification, certification, re-certification and any other term that would be a reliable representation by an HMO or preferred provider carrier to a physician or provider if the request for the pre-certification, certification, re-certification, or representation includes the requirements of §19.1724(d) of this title (relating to Verification).

(40) [~~(38)~~] Working day--A weekday, excluding New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

§19.1723. Preauthorization.

(a) - (c) (No change.)

(d) On receipt of a preauthorization request from a preferred provider for proposed services that require preauthorization, the HMO or preferred provider carrier shall issue and transmit a determination indicating whether the proposed medical or health care services are preauthorized. An HMO or preferred provider carrier shall respond to request for preauthorization within the following time periods.

(1) For services not included under paragraphs (2) and (3) of this subsection, the determination must be issued and transmitted not later than the third calendar day after the date the request is received by the HMO or preferred provider carrier. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections [~~subsection~~] (e) and (f) of this section, the determination must be issued and transmitted within three calendar days from the beginning of the next time period requiring such personnel.

(2) If the proposed medical or health care services are for concurrent hospitalization care, the HMO or preferred provider carrier shall issue and transmit a determination indicating whether proposed services are preauthorized within 24 hours of receipt of the request. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections [~~subsection~~] (e) and (f) of this section, the determination must be issued and transmitted within 24 hours from the beginning of the next time period requiring such personnel.

(3) If the proposed medical care or health care services involve post-stabilization treatment, or a life-threatening condition as defined in §19.1703 of this title (relating to Definitions), the HMO or preferred provider carrier shall issue and transmit a determination indicating whether proposed services are preauthorized within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no case to exceed one hour from receipt of the request. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections [~~subsection~~] (e) and (f) of this section, the determination must be issued and transmitted within one hour from the beginning of the next time period requiring such personnel. In such circumstances, the determination shall be provided to the treating physician or health care provider. If the HMO or preferred provider carrier issues an adverse determination in response to a request for post-stabilization treatment or a request for treatment involving a life-threatening condition, the HMO or preferred provider carrier shall provide to the enrollee or person acting on behalf of the enrollee, and the enrollee's provider of record, the notification required by §19.1721(c) of this title (relating to Independent Review of Adverse Determinations).

(e) A preferred provider may inquire via telephone as to the HMO or preferred provider carrier's preauthorization determination. An HMO or preferred provider carrier shall have appropriate personnel as described in §19.1706 of this title (relating to Personnel) reasonably available at a toll-free telephone number to provide the determination between 6:00 a.m. and 6:00 p.m. central time Monday through Friday on each day that is not a legal holiday and between 9:00 a.m. and noon central time on Saturday, Sunday, and legal holidays. An HMO or preferred provider carrier must have a telephone system capable of accepting or recording incoming inquiries after 6:00 p.m. central time Monday through Friday and after noon central time on Saturday, Sunday, and legal holidays and must acknowledge each of those calls not later than 24 hours after the call is received. An HMO or preferred

provider carrier providing a preauthorization determination under [~~this~~] subsection (d) of this section shall, within three calendar days of receipt of the request, provide a written notification to the preferred provider.

(f) An HMO providing routine vision services or dental health care services as a single health care service plan is not required to comply with subsection (e) of this section with respect to those services. An HMO that is exempt from subsection (e), as described in this subsection, shall:

(1) have appropriate personnel as described in §19.1706 of this title (relating to Personnel) reasonably available at a toll-free telephone number to provide the preauthorization determination between 8:00 a.m. and 5:00 p.m. central time Monday through Friday on each day that is not a legal holiday;

(2) have a telephone system capable of accepting or recording incoming inquiries after 5:00 p.m. central time Monday through Friday and all day on Saturday, Sunday, and legal holidays, and must acknowledge each of those calls not later than the next business day after the call is received; and

(3) when providing a preauthorization determination under subsection (d) of this section, within three calendar days of receipt of the request, provide a written notification to the preferred provider.

(g) [~~(f)~~] If an HMO or preferred provider carrier has preauthorized medical care or health care services, the HMO or preferred provider carrier may not deny or reduce payment to the physician or provider for those services based on medical necessity or appropriateness of care unless the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the preauthorized medical or health care services.

(h) [~~(g)~~] If an HMO or preferred provider carrier issues an adverse determination in response to a request made under subsection (d) of this section, a notice consistent with the provisions of §19.1710(c) of this title (relating to Notice of Determinations Made by Utilization Review Agents) shall be provided to the enrollee, a person acting on behalf of the enrollee, or the enrollee's provider of record. An enrollee may appeal any adverse determination in accordance with §19.1712 of this title (relating to Appeal of Adverse Determination of Utilization Review Agents).

(i) [~~(h)~~] This section applies to an agent or other person with whom an HMO or preferred provider carrier contracts to perform, or to whom the HMO or preferred provider carrier delegates the performance of preauthorization of proposed medical or health care services. Delegation of preauthorization services does not limit in any way the HMO or preferred provider carrier's responsibility to comply with all statutory and regulatory requirements.

(j) [~~(i)~~] The provisions of this section may not be waived, voided, or nullified by contract.

§19.1724. Verification.

(a) The provisions of this section apply to:

(1) HMOs;

(2) preferred provider carriers;

(3) preferred providers; and

(4) physicians or health care providers that provide to an enrollee of an HMO or preferred provider carrier:

(A) care related to an emergency or its attendant episode of care as required by state or federal law; or

(B) specialty or other medical care or health care services at the request of the HMO, preferred provider carrier, or a preferred provider because the services are not reasonably available from a preferred provider who is included in the HMO or preferred provider carrier's network.

(b) - (c) (No change.)

(d) An HMO providing routine vision services or dental health care services as a single health care service plan is not required to comply with subsection (c) of this section with respect to those services. An HMO that is exempt from subsection (c) of this section, as described in this subsection, shall:

(1) have appropriate personnel reasonably available at a toll-free telephone number to accept telephone requests for verification and to provide determinations of previously requested verifications between 8:00 a.m. and 5:00 p.m. central time Monday through Friday on each day that is not a legal holiday;

(2) have a telephone system capable of accepting or recording incoming inquiries after 5:00 p.m. central time Monday through Friday and all day on Saturday, Sunday, and legal holidays. The HMO must acknowledge each of those calls not later than the next business day after the call is received.

(e) [~~(d)~~] Any request for verification shall contain the following information:

(1) patient name;

(2) patient ID number, if included on an identification card issued by the HMO or preferred provider carrier;

(3) patient date of birth;

(4) name of enrollee or subscriber, if included on an identification card issued by the HMO or preferred provider carrier;

(5) patient relationship to enrollee or subscriber;

(6) presumptive diagnosis, if known, otherwise presenting symptoms;

(7) description of proposed procedure(s) or procedure code(s);

(8) place of service code where services will be provided and, if place of service is other than provider's office or provider's location, name of hospital or facility where proposed service will be provided;

(9) proposed date of service;

(10) group number, if included on an identification card issued by the HMO or preferred provider carrier;

(11) if known to the provider, name and contact information of any other carrier, including the name, address and telephone number, name of enrollee, plan or ID number, group number (if applicable), and group name (if applicable);

(12) name of provider providing the proposed services; and

(13) provider's federal tax ID number.

(f) [~~(e)~~] Receipt of a written request or a written response to a request for verification under this section is subject to the provisions of §21.2816 of this title (relating to Date of Receipt).

(g) [~~(f)~~] If necessary to verify proposed medical care or health care services, an HMO or preferred provider carrier may, within one day of receipt of the request for verification, request information from the preferred provider in addition to the information provided in the

request for verification. An HMO or preferred provider carrier may make only one request for additional information from the requesting preferred provider under this section.

(h) [~~(g)~~] A request for information under subsection (g) [~~(f)~~] of this section must:

(1) be specific to the verification request;

(2) describe with specificity the clinical and other information to be included in the response;

(3) be relevant and necessary for the resolution of the request; and

(4) be for information contained in or in the process of being incorporated into the enrollee's medical or billing record maintained by the preferred provider.

(i) [~~(h)~~] On receipt of a request for verification from a preferred provider, the HMO or preferred provider carrier shall issue a verification or declination. An HMO or preferred provider carrier shall issue the verification or declination within the following time periods.

(1) Except as provided in paragraphs (2) and (3) of this subsection, an HMO or preferred provider carrier shall provide a verification or declination in response to a request for verification without delay, and as appropriate to the circumstances of the particular request, but not later than five days after the date of receipt of the request for verification. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections [~~subsection~~] (c) and (d) of this section, the determination must be provided within five days from the beginning of the next time period requiring such personnel.

(2) If the request is related to a concurrent hospitalization, the response must be sent to the preferred provider without delay but not later than 24 hours after the HMO or preferred provider carrier received the request for verification. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections [~~subsection~~] (c) and (d) of this section, the determination must be provided within 24 hours from the beginning of the next time period requiring such personnel.

(3) If the request is related to post-stabilization care or a life-threatening condition, the response must be sent to the preferred provider without delay but not later than one hour after the HMO or preferred provider carrier received the request for verification. If the request is received outside of the period requiring the availability of appropriate personnel as required in subsections [~~subsection~~] (c) and (d) of this section, the determination must be provided within one hour from the beginning of the next time period requiring such personnel.

(j) [~~(i)~~] If the request involves services for which preauthorization is required, the HMO or preferred provider carrier shall follow the procedures set forth in §19.1723 of this title (relating to Preauthorization) and respond regarding the preauthorization request in compliance with that section.

(k) [~~(j)~~] A verification or declination may be delivered via telephone call, in writing or by other means, including the Internet, as agreed to by the preferred provider and the HMO or preferred provider carrier. If the verification or declination is delivered via telephone call, the HMO or preferred provider carrier shall, within three calendar days of providing a verbal response, provide a written response which must include, at a minimum:

(1) enrollee name;

(2) enrollee ID number;

(3) requesting provider's name;

(4) hospital or other facility name, if applicable;

(5) a specific description, including relevant procedure codes, of the services that are verified or declined;

(6) if the services are verified, the effective period for the verification, which shall not be less than 30 days from the date of verification;

(7) if the services are verified, any applicable deductibles, copayments, or coinsurance for which the enrollee is responsible;

(8) if the verification is declined, the specific reason for the declination;

(9) a unique verification number that allows the HMO or preferred provider carrier to match the verification and subsequent claims related to the proposed service; and

(10) a statement that the proposed services are being verified or declined pursuant to Title 28 Texas Administrative Code §19.1724.

(l) [~~(k)~~] An HMO or preferred provider carrier that issues a verification may not deny or otherwise reduce payment to the preferred provider for those medical care or health care services if provided on or before the expiration date for the verification, which shall not be less than 30 days, unless the preferred provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the medical or health care services as verified.

(m) [~~(l)~~] The provisions of this section may not be waived, voided, or nullified by contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §§21.2802, 21.2807, 21.2815, 21.2821

The Texas Department of Insurance proposes amendments to §§21.2802, 21.2807, 21.2815, and 21.2821, concerning submission of clean claims. These amendments: (1) ensure that carriers are aware of the responsibility to process a clean claim submitted together with deficient claims; (2) ensure that penalties are calculated consistently and in accordance with statutory requirements; and (3) provide consistency in reporting dates and clarify the reporting period for the required verification data report.

The proposed amendment to §21.2802 adds a definition of patient responsibility to clarify that the term does not include amounts that are not a portion of the contracted rate. Section

21.2802 also contains a proposed definition of "batch submission" to add clarity to the proposed amendments to §21.2807 that detail a carrier's obligations with respect to multiple claims submitted together. The proposed amendments to §21.2807 provide that a carrier may not deny or refuse to process a clean electronic claim because the claim is submitted together with or in a batch submission with claims that are deficient. This is consistent with the statutory and regulatory requirements that, upon receiving an electronic clean claim at the designated address for claims receipt, a carrier must pay, deny or audit the claim within 30 days. The department recognizes that Senate Bill (SB) 50 (79th Regular Legislative Session) requires carriers to, upon request, include a provision in the provider's contract indicating that the carrier will not deny or refuse to process an otherwise clean claim submitted in a batch of claims that may contain deficient claims. The department has, elsewhere in this edition of the *Texas Register*, proposed amendments to the contracting requirement rules in Chapters 3 and 11 that implement SB 50. The changes in law allow providers to be better aware of their rights under their contracts with health plans. The proposed changes to §21.2807 clarify that the requirement to process an electronic clean claim exists when the carrier receives the claim despite the claim being included among other claims that may or may not be clean. The requirement to process clean claims submitted together with deficient claims exists whether or not there is language in the contract addressing batch claim submissions. The proposed definition of "batch submission" identifies the intended consistency between the term and its usage in federal standardized electronic health care transactions by clarifying that the reference to a batch submission is a reference to existing federal standardized electronic health care transactions. Although the department has proposed language regarding the meaning of "batch submissions," carriers must avoid reading the language of SB 50 and the proposed language too narrowly. The language of the statute and the proposed amendment also apply to clean claims that are submitted "together with" claims that are deficient. This language is broader than the term "batch submission" and includes groups of claims that may or may not be properly classified as a batch submission for federal standardized transactions. Therefore, carriers should not unduly focus on whether claims that are submitted together are in a batch submission that meets the federal regulatory definition. In addition, changes were made to this section to change specific references to more general references to reduce the need for frequent updating and revisions.

The proposed amendments to §21.2815 clarify the methodology for calculating a penalty when applicable patient responsibility under the terms of the health care plan is taken into consideration. The department has received inquiries regarding the particular issue of coinsurance responsibilities when calculating a penalty under the underpayment provisions of §21.2815. In seeking to address this issue, the department recognizes the need to address the penalty section as a whole to avoid any further confusion and has proposed amendments to both the late payment and underpayment sections of the penalty provisions in the subchapter.

For late payment penalties, the existing rule language and the statute provide that the basis for the penalty is the difference between billed charges and the contracted rate for the services. Because a single carrier may offer several different health plans that include varying levels of patient responsibility, the amount the carrier owes for a particular claim may vary. The design of the health plan's patient responsibility provisions will not affect the total amount the provider is due under the contract, but will affect the respective obligations of the carrier and patient. In order to consistently base prompt pay penalties on the difference between the provider's billed charges and the contracted rate for the services as required by the statute, the proposed amendments clarify that the contracted rate is the total amount the provider is due under the terms of the contract, which includes patient responsibility.

To interpret "contracted rate" in a late payment penalty calculation to include only the amount owed by the carrier would allow penalty amounts to vary based upon patient responsibility. This would actually increase penalties as the carrier's responsibility for a particular claim decreases. For example, assume the billed charge for a service is $1,500, and the contracted rate for the services is $1,000. If the patient owes $950 due to an unpaid deductible, the carrier will owe only a small amount ($50) for the claim. If the carrier fails to pay the $50 within the statutory claims payment period, the penalty will be $1,500 minus $1,000, or $500. If the amount owed by the carrier is used as the contracted rate, the penalty increases to $1,500 minus $50, or $1,450. To avoid this potential and inappropriate result, the amendments to §21.2815(b)(1) clarify that patient financial responsibility is included in the contracted rate used for calculating a penalty.

The proposed amendments to §21.2815(d) clarify the method for calculating a penalty on an underpaid claim. The statute requires the carrier to calculate "the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to the billed charges." This results in the carrier paying the billed charges rate for the portion of the claim the carrier failed to pay on time. The proposal includes an example that clarifies how coinsurance or other patient responsibility should be treated when calculating an underpayment penalty. The proposal also clarifies that the ratio used in the calculation should be the balance the carrier owes on the claim to the total amount the provider is due under the contract with the health plan. This represents the percentage of the claim that was left unpaid after the carrier's initial payment. This is consistent with the statutory directive that the carrier must pay "a penalty on the amount not timely paid." (Insurance Code Article 3.70-3C §3I(d) and §843.342(d).) This percentage is then applied to the billed charges so that the penalty is based upon the specific portion of the claim that was paid late. The proposed amendments provide examples that include patient responsibility amounts so that providers and carriers are better aware of the correct calculation methods.

The department has also proposed an amendment to subsection (e) to clarify penalty calculations for claims that are subject to coordination of benefits for multiple carriers. The proposed amendment indicates that the overall percentage of the claim owed by the secondary carrier will impact the penalty calculations such that the contracted rate and billed charges amounts are both reduced to be consistent with the secondary carrier's obligation on the claim.

The proposed amendments to §21.2821 change the deadline for the annual verification reporting requirement and clarify the time period for which reporting is required. The proposed reporting date has been changed to August 15 to make it consistent with one of the existing dates for quarterly reporting of claims data. The proposed amendment to the reporting time period establishes the 12-month period for reporting as July 1 of the prior year through June 31 of the current year.

The department will consider the adoption of the proposed amendments in a public hearing under Docket No. 2617 scheduled for September 7, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed amendments will be the clarification of a carrier's obligation to pay all properly submitted clean claims regardless of whether they are submitted together with claims that are deficient. This will avoid improper denials of clean claims and the unnecessary delays and penalties that result from those denials. In addition, the proposed amendments will add clarity and consistency to the calculation of prompt pay penalties. The proposed amendments also specify a reporting period for verification request data so that carriers will be better aware of the requirements for collecting data. Finally, the proposed amendments provide greater efficiency by consolidating reporting dates for annual verification reporting with the second quarter claims data reporting requirement. Any cost to persons required to comply with these proposed amendments for each year of the first five years the amendments will be in effect is the result of the enactment of Senate Bill 418 (SB 418) (78th Regular Legislative Session) and not the result of the adoption, enforcement, or administration of the amendments. The proposed amendments clarify existing requirements under this subchapter and do not create new obligations or processes for persons required to comply with the rules. Consistent with SB 418, the proposed amendment to §21.2807 explains the application of the requirement to process a clean claim in a timely manner to circumstances in which clean claims are submitted together with deficient claims, an obligation that existed prior to the proposed amendments. The proposed amendments to §21.2815 provide clarifying language and examples to better enable carriers to calculate penalties and do not create any new obligations not already required under the existing rules or SB 418. The proposed amendments to §21.2821 include minor changes to existing reporting requirements and do not impose any additional costs. Ms. Stokes has determined that there is no adverse economic impact on entities that qualify as a small business or micro-business under Government Code §2006.001 as a result of the proposed amendments. In addition, the department believes it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses since all carriers, regardless of size, are subject to the statutory penalty requirements and will benefit from the additional guidance provided in the proposed amendments.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 6, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under Insurance Code Articles 3.70-3C §3A(e), 3.70-3C §3I, and 21.52Y, and §§843.342, 843.338, and 36.001. Article 3.70-3C §3A(e) and §843.338 require carriers to pay clean claims upon receipt and within the statutory claims payment period. Article 3.70-3C §3I and §843.342 provide for the calculation of penalties for violations of prompt pay requirements. Article 21.52Y creates the Technical Advisory Committee on Claims Processing (TACCP) to advise the commissioner on claims processing, payment and adjudication. The statute requires the TACCP to submit a biannual report to the legislature concerning the activities of the committee. The reporting requirements in this subchapter are necessary to provide information to the TACCP in fulfilling its statutory role. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 3.70-3C §3A(e), 3.70-3C §3I, and 21.52Y, and §843.342 and §843.338

§21.2802. Definitions.

The following words and terms when used in this subchapter shall have the following meanings:

(1) (No change.)

(2) Batch submission--A group of electronic claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number.

(3) [~~(2)~~] Billed charges--The charges for medical care or health care services included on a claim submitted by a physician or provider. For purposes of this subchapter, billed charges must comply with all other applicable requirements of law, including Texas Health and Safety Code §311.0025, Texas Occupations Code §105.002, and Texas Insurance Code Art. 21.79F.

(4) [~~(3)~~] CMS--The Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

(5) [~~(4)~~] Catastrophic event--An event, including acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquake, windstorm, flood or organized labor stoppages, that cannot reasonably be controlled or avoided and that causes an interruption in the claims submission or processing activities of an entity for more than two consecutive business days.

(6) [~~(5)~~] Clean claim--

(A) For non-electronic claims, a claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy that includes:

(i) the required data elements set forth in §21.2803(b) of this title (relating to Elements of a Clean Claim); and

(ii) if applicable, the amount paid by the primary plan or other valid coverage pursuant to §21.2803(c) of this title (relating to Elements of a Clean Claim);

(B) For electronic claims, a claim submitted by a physician or provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy using the ASC X12N 837 format and in compliance with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides and trading partner agreements.

(7) [~~(6)~~] Condition code--The code utilized by CMS to identify conditions that may affect processing of the claim.

(8) [~~(7)~~] Contracted rate--Fee or reimbursement amount for a preferred provider's services, treatments, or supplies as established by agreement between the preferred provider and the HMO or preferred provider carrier.

(9) [~~(8)~~] Corrected claim--A claim containing clarifying or additional information necessary to correct a previously submitted claim.

(10) [~~(9)~~] Deficient claim--A submitted claim that does not comply with the requirements of §21.2803(b), (c) or (e) of this title.

(11) [~~(10)~~] Diagnosis code--Numeric or alphanumeric codes from the International Classification of Diseases (ICD-9-CM), Diagnostic and Statistical Manual (DSM-IV), or their successors, valid at the time of service.

(12) [~~(11)~~] Duplicate claim--Any claim submitted by a physician or provider for the same health care service provided to a particular individual on a particular date of service that was included in a previously submitted claim. The term does not include corrected claims, or claims submitted by a physician or provider at the request of the HMO or preferred provider carrier.

(13) [~~(12)~~] HMO--A health maintenance organization as defined by Insurance Code §843.002(14).

(14) [~~(13)~~] HMO delivery network--As defined by Insurance Code §843.002(15).

(15) [~~(14)~~] Institutional provider--An institution providing health care services, including but not limited to hospitals, other licensed inpatient centers, ambulatory surgical centers, skilled nursing centers and residential treatment centers.

(16) [~~(15)~~] Occurrence span code--The code utilized by CMS to define a specific event relating to the billing period.

(17) [~~(16)~~] Patient control number--A unique alphanumeric identifier assigned by the institutional provider to facilitate retrieval of individual financial records and posting of payment.

(18) Patient responsibility--Any portion of the contracted rate for which the patient is responsible. Patient responsibility does not include amounts due from a patient in addition to the contracted fee or reimbursement amount for the specific services, treatments, or supplies.

(19) [~~(17)~~] Patient-status-at-discharge code--The code utilized by CMS to indicate the patient's status at time of discharge or billing.

(20) [~~(18)~~] Physician--Anyone licensed to practice medicine in this state.

(21) [~~(19)~~] Place of service code--The codes utilized by CMS that identify the place at which the service was rendered.

(22) [~~(20)~~] Preferred provider--

(A) with regard to a preferred provider carrier, a preferred provider as defined by Insurance Code Article 3.70-3C, §1(10) (Preferred Provider Benefit Plans) or Article 3.70-3C, §1(1) (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans).

(B) with regard to an HMO,

(i) a physician, as defined by Insurance Code §843.002(22), who is a member of that HMO's delivery network; or

(ii) a provider, as defined by Insurance Code §843.002(24), who is a member of that HMO's delivery network.

(23) [~~(21)~~] Preferred provider carrier--An insurer that issues a preferred provider benefit plan as provided by Insurance Code Article 3.70-3C, Section 2 (Preferred Provider Benefit Plans).

(24) [~~(22)~~] Primary plan--As defined in §3.3506 of this title (relating to Use of the Terms "Plan," "Primary Plan," "Secondary Plan," and "This Plan" in Policies, Certificates and Contracts).

(25) [~~(23)~~] Procedure code--Any alphanumeric code representing a service or treatment that is part of a medical code set that is adopted by CMS as required by federal statute and valid at the time of service. In the absence of an existing federal code, and for non-electronic claims only, this definition may also include local codes developed specifically by Medicaid, Medicare, an HMO, or a preferred provider carrier to describe a specific service or procedure.

(26) [~~(24)~~] Provider--Any practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state, other than a physician.

(27) [~~(25)~~] Revenue code--The code assigned by CMS to each cost center for which a separate charge is billed.

(28) [~~(26)~~] Secondary plan--As defined in §3.3506 of this title.

(29) [~~(27)~~] Source of admission code--The code utilized by CMS to indicate the source of an inpatient admission.

(30) [~~(28)~~] Statutory claims payment period--

(A) the 45-calendar-day period in which an HMO or preferred provider carrier shall make claim payment or denial, in whole or in part, after receipt of a non-electronic clean claim pursuant to Insurance Code Article 3.70-3C, §3A (Preferred Provider Benefit Plans) and Chapter 843;

(B) the 30-calendar-day period in which an HMO or preferred provider carrier shall make claim payment or denial, in whole or in part, after receipt of an electronically submitted clean claim pursuant to Insurance Code Article 3.70-3C, §3A (Preferred Provider Benefit Plans) and Chapter 843; or

(C) the 21-calendar-day period in which an HMO or preferred provider carrier shall make claim payment after affirmative adjudication of an electronically submitted clean claim for a prescription benefit pursuant to Insurance Code Article 3.70-3C, §3A(f) (Preferred Provider Benefit Plans) and §843.339, and §21.2814 of this title (relating to Electronic Adjudication of Prescription Benefits).

(31) [~~(29)~~] Subscriber--If individual coverage, the individual who is the contract holder and is responsible for payment of premiums to the HMO or preferred provider carrier; or if group coverage, the individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility for enrollment in a group health benefit plan issued by the HMO or the preferred provider carrier.

(32) [~~(30)~~] Type of bill code--The three-digit alphanumeric code utilized by CMS to identify the type of facility, the type of care, and the sequence of the bill in a particular episode of care.

§21.2807. Effect of Filing a Clean Claim.

(a) (No change.)

(b) After receipt of a clean claim, prior to the expiration of the applicable statutory claims payment period specified in §21.2802

[§21.2802(28)] of this title (relating to Definitions), an HMO or preferred provider carrier shall:

(1) - (4) (No change.)

(c) With regard to a clean claim for a prescription benefit subject to the statutory claims payment period specified in §21.2802 [§21.2802(28)(C)] of this title [(relating to Definitions)], an HMO or preferred provider carrier shall, after receipt of an electronically submitted clean claim for a prescription benefit that is affirmatively adjudicated pursuant to Insurance Code Article 3.70-3C, §3A(f) (Preferred Provider Benefit Plans) and Insurance Code §843.339, pay the prescription benefit claim within 21 calendar days after the clean claim is adjudicated.

(d) An HMO or preferred provider carrier or an HMO's or preferred provider carrier's clearinghouse that receives an electronic clean claim is subject to the requirements of this subchapter regardless of whether the claim is submitted together with, or in a batch submission with, a claim that is deficient.

§21.2815. Failure to Meet the Statutory Claims Payment Period.

(a) (No change.)

(b) The following examples demonstrate how to calculate penalty amounts under subsection (a) of this section:

(1) If the contracted rate, including any patient financial responsibility, [owed by the HMO or preferred provider carrier] is $10,000 and the billed charges are $15,000, and the HMO or preferred provider carrier pays the claim [is paid] on or before the 45th day after the end of the applicable statutory claims payment period, the HMO or preferred provider carrier shall pay, in addition to the amount [contracted rate] owed on the claim, 50% of the difference between the billed charges ($15,000) and the contracted rate ($10,000) or $2,500. The basis for the penalty is the difference between the total contracted amount, including any patient responsibility, and the provider's billed charges;

(2) - (3) (No change.)

(c) (No change.)

(d) For the purposes of subsection (c) of this section, the underpaid amount is calculated on the ratio of the balance owed by the carrier [amount underpaid on the contracted rate] to the total contracted rate, including any patient financial responsibility, [contracted rate] as applied to the billed charges. For example, a claim for a contracted rate of $1,000.00 and billed charges of $1,500.00 is initially underpaid at $600.00, with the insured owing $200.00 and the HMO or preferred provider carrier owing a balance of $200.00. The HMO or preferred provider carrier pays the [$800.00 and the] $200.00 balance [is paid] on the 30th day after the end of the applicable statutory claims payment period. The amount the HMO or preferred provider carrier initially underpaid, $200.00, is 20% of the contracted rate. To [In order to] determine the penalty, the HMO or preferred provider carrier must calculate 20% of the billed charges, which is $300.00. This amount represents the underpaid amount for subsection (c)(1) of this section. Therefore, the HMO or preferred provider carrier must pay, as a penalty, 50% of $300.00, or $150.00.

(e) For purposes of calculating a penalty when an HMO or preferred provider carrier is a secondary carrier for a claim, the contracted rate and billed charges must be reduced in accordance with the percentage of the entire claim that is owed by the secondary carrier. The following example illustrates this method: Carrier A pays 80% of a claim for a contracted rate of $1,000 and billed charges of $1,500, leaving $200 unpaid as the patient's responsibility. The patient has coverage through Carrier B that is secondary and Carrier B will owe the $200 balance. If Carrier B fails to pay the $200 within the applicable statutory claims payment period, Carrier B will pay a penalty based on the percentage of the claim that it owed. The contracted rate for Carrier B will therefore be $200 (20% of $1,000), and the billed charges will be $300 (20% of $1,500).

(f) [(e)] An HMO or preferred provider carrier is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with the applicable statutory claims payment period is a result of a catastrophic event that the HMO or preferred provider carrier certified according to the provisions of §21.2819 of this title (relating to Catastrophic Event); or

(2) if the claim was paid in accordance with §21.2807 of this title, but for less than the contracted rate, and:

(A) the preferred provider notifies the HMO or preferred provider carrier of the underpayment after the 180th day after the date the underpayment was received; and

(B) the HMO or preferred provider carrier pays the balance of the claim on or before the 45th day after the date the insurer receives the notice of underpayment.

(g) [(f)] Subsection (f) [(e)] of this section does not relieve the HMO or preferred provider carrier of the obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(h) [(g)] An HMO or preferred provider carrier that pays a penalty under this section shall clearly indicate on the explanation of payment the amount of the contracted rate paid, the amount of the billed charges as submitted by the physician or provider and the amount paid as a penalty. A non-electronic explanation of payment complies with this requirement if it clearly and prominently identifies the notice of the penalty amount.

§21.2821. Reporting Requirements.

(a) - (d) (No change.)

(e) An HMO or preferred provider carrier shall annually submit to the department, on or before August 15th [July 31], at a minimum, information related to the number of declinations of requests for verifications from July 1st of the prior year to June 30th of the current year, in the following categories:

(1) policy or contract limitations:

(A) premium payment timeframes that prevent verifying eligibility for 30-day period;

(B) policy deductible, specific benefit limitations or annual benefit maximum;

(C) benefit exclusions;

(D) no coverage or change in membership eligibility, including individuals not eligible, not yet effective or membership cancelled;

(E) pre-existing condition limitations; and

(F) other.

(2) declinations due to inability to obtain necessary information in order to verify requested services from the following persons:

(A) the requesting physician or provider;

(B) any other physician or provider; and

(C) any other person.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503026
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 463-6327

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SUBCHAPTER DD. ELIGIBILITY STATEMENTS

28 TAC §§21.3801 - 21.3808

The Texas Department of Insurance proposes new Subchapter DD, §§21.3801 - 21.3808, concerning eligibility statements. These new sections are necessary to implement the provisions of Senate Bill (SB) 1149 (79th Regular Legislative Session), requiring carriers to provide certain eligibility information to contracted physicians and providers (hereinafter collectively referred to as "providers"). Consistent with SB 1149, the department consulted with the Technical Advisory Committee on Claims Processing (TACCP) in a meeting held June 30, 2005, and solicited comments prior to initiating the rulemaking process. The proposed amendments create a new Subchapter DD relating to eligibility statements. Proposed §21.3801 defines the scope of the subchapter and provides that, consistent with SB 1149, the provisions of Insurance Code §1274.002 and this subchapter do not apply to Medicaid and Children's Health Insurance Program (CHIP) plans. Insurance Code §1274.005 allows the Commissioner of Insurance, in consultation with the Commissioner of the Health and Human Services Commission, to determine whether certain provisions of §1274.002 will cause a negative fiscal impact to the state with respect to providing benefits or services under the Medicaid and CHIP plans and, if so, to waive application of those provisions. Based upon a request from the Commissioner of the Health and Human Services Commission, proposed §21.3801 states that the statute and rules do not apply to Medicaid and CHIP plans. Proposed §21.3802 provides definitions for terms used within the subchapter. Proposed §21.3803 sets forth the requirement that carriers provide written notice to providers of the acceptable method(s) for requesting eligibility statements. The written notice is required to be delivered to providers that enter into or renew contracts with a health benefit plan issuer on or after January 31, 2006. The notice may be included in existing materials, such as a provider manual or other provider communication, which may be available on a website or in other electronic format. If an issuer chooses to make the eligibility statement process available to all participating providers and not limit the availability of the process to only those providers that enter into or renew a contract on or after January 31, 2006, the issuer may provide the notice to all participating providers. Proposed §21.3804 identifies the information required in a request for an eligibility statement. As a result of the consultation process with the TACCP, the department is aware that existing processes that closely mirror the requirements of SB 1149 require the inclusion of an identification number or other information in the provider's initial request. Consistent with the statutory framework, the proposed rules require health benefit plan issuers to maintain a system that is able to provide eligibility statements in response to the three items of information required for a request. If a health benefit plan issuer is unable to locate an enrollee using the three pieces of information provided in the request, the health benefit plan issuer may request additional information. However, a health benefit plan issuer may not require that the provider include any additional information as part of an initial request for an eligibility statement. The ability to request additional information may not be used as a substitute for compliance with the requirement to provide eligibility statements in response to the three items of information required in a request. The department anticipates that requests for additional information should rarely be necessary if the health benefit plan issuer is compliant with the requirements of proposed §21.3805(a).

Additionally, if the provider is seeking information concerning whether the service to be performed is a covered benefit, the provider must include a description of the specific type or category of service. Consistent with the requirement that a health benefit plan issuer provide benefit information related to the type or category of service, the provider need not include such detailed information as procedure codes or a specific description of the service. If a provider would like confirmation of whether a particular service will be covered under the terms of the policy, the provider may request a verification under §19.1724 of this title. Under that process, the provider will include an increased level of detail regarding the proposed services and the response will include a more definite answer as to the coverage terms of the policy. Consistent with this concept, §21.3807 specifies that an eligibility statement is not a verification under §19.1724 of this title.

Proposed §21.3805 details the required content of an eligibility statement and the requirement that the health benefit plan issuer provide an eligibility statement in such a manner as to give a provider access to the information at the time of the enrollee's visit. An eligibility statement provided under this proposed section is not required to be in writing and may be delivered telephonically, electronically, or by internet website portal consistent with the procedures detailed by the health benefit plan issuer pursuant to §21.3803. If the provider includes in the request information concerning the proposed services, the health benefit plan issuer must respond with information concerning whether that type or category of service is a covered benefit under the policy. Because the eligibility statement process is designed to quickly provide information to a provider so that a patient's eligibility status is known at the time of the visit, a health benefit plan issuer is required to provide more general coverage information regarding the type or category of service and not to issue a guarantee that a particular service is covered. A provider that wishes to receive a guarantee that a claim resulting from a proposed service will be paid should utilize the existing verification process that is designed for that purpose.

Proposed §21.3806 provides that a health benefit plan issuer may refuse to provide all or a portion of an eligibility statement if applicable privacy laws prevent disclosure. Proposed §21.3806 also requires the health benefit plan issuer to describe the reason(s) for refusing to provide the eligibility information. Within three days, the health benefit plan issuer must also provide a written explanation of the reason(s) and identify the applicable law(s) that prevent disclosure. The health benefit plan issuer may provide this information via e-mail, facsimile or other electronic means. The department believes it is important that the information be provided in written form because it ensures that the provider has the opportunity to evaluate the factual and legal

basis for the health benefit plan issuer's refusal to provide the information and, if appropriate, respond to the identified privacy concerns. Proposed §21.3808 provides for the severability of the subchapter.

The department will consider the adoption of the proposed new sections in a public hearing under Docket No. 2619 scheduled for September 7, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be the establishment of a clear process by which providers may make requests for eligibility information and health benefit plan issuers may respond to such requests. Implementation should result in greater availability to providers of current information relating to enrollee demographics, enrollment and eligibility status, benefits, and financial responsibility. Except as provided in this discussion, any cost to persons required to comply with these sections for each year of the first five years the proposed sections will be in effect is the result of the enactment of SB 1149 and not the result of the adoption, enforcement, or administration of the sections. The probable economic cost to persons required to comply with the sections is as follows. The requirement that health benefit plan issuers provide written notice of methods for eligibility statement requests set forth in §21.3803 may impose an additional cost not required by the statute. This requirement is necessary to enable providers to request eligibility statements efficiently by providing a clear understanding of each health benefit plan issuer's process for receiving and responding to eligibility requests. The proposal does not require health benefit plan issuers to deliver the notice by any particular means, and they may reduce or avoid costs by including the notice in existing materials, such as a provider manual or other provider communication, which may be available on a website or in other electronic format. Notices that are delivered electronically, whether included with other materials or sent separately, should not result in additional cost. For printed notices, a health benefit plan issuer should not incur additional cost if the notice will fit on an existing page of a provider manual or other similar materials. If a health benefit plan issuer decides to print the notice and it does not fit on an existing page, the health benefit plan issuer will be subject to the cost of one additional printed sheet of paper, which the department estimates will cost between one and four cents per page. If a health benefit plan issuer intends to distribute a separate printed notice to participating providers, it will incur the cost of paper plus the cost of delivery to all participating providers, which should not exceed 40 cents per provider. The costs associated with delivery of the notice may include postage or expenses related to facsimile transmission. The total cost to a health benefit plan issuer will depend on the number of notices it needs to print and distribute and the method it uses for distribution. Except to the extent that the size of a health benefit plan issuer may impact the number of providers with which the issuer may contract, and thus the number of notices that it must provide, the cost of the notices should not vary between health benefit plan issuers that are large, small, or micro businesses. The department believes it would be neither legal nor feasible to exempt small or micro businesses from this part of the proposed rule, or to establish separate compliance standards, since to do so would unfairly deprive providers that have contracted with small or micro businesses of information critical to the eligibility statement process.

The requirement that health benefit plan issuers provide a written explanation of the inability to provide an eligibility statement due to privacy laws will impose an additional cost not required by the statute. This requirement is necessary to ensure that a provider has the opportunity to evaluate the factual and legal basis for the health benefit plan issuer's refusal to provide an eligibility statement and, if appropriate, respond to the identified privacy concerns. A health benefit plan issuer may deliver the written explanation via e-mail, facsimile transmission, U.S. mail, or other electronic means. No matter which method the issuer employs, the requirement that an issuer identify a privacy law that prevents disclosure is not purely a function of the rule. SB 1149 states that health benefit plan issuers may only provide information to providers authorized under state and federal law to receive personally identifiable information, and privacy laws prevent unauthorized disclosure of such information. In order to comply with these requirements, health benefit plan issuers must be able to determine whether a requesting provider is authorized under state and federal law to receive the information. Therefore, the only cost related to the requirement that a health benefit plan issuer provide an explanation for its inability to provide an eligibility statement is related to reducing the explanation to written form and transmitting it to the provider. As with the notice for methods of eligibility statement requests, an issuer may combine this notice with other transmissions, such as the eligibility statement for another enrollee. If the issuer transmits the notice separately, costs will depend on the method used. As indicated herein, the department estimates the cost of one printed sheet of paper at between one and four cents. If a health benefit plan issuer intends to provide the explanation to providers via U.S. mail or facsimile, it will incur the cost of paper plus the cost of delivery, which should not exceed 40 cents per explanation. The costs associated with delivery of the notice may include postage or expenses related to facsimile transmission. If a health benefit plan issuer transmits the information via e-mail, the health benefit plan issuer should not incur any additional cost for transmission. For existing electronic systems designed to provide eligibility information to providers, such as web portals, some programming costs may be necessary to enable the system to produce a written explanation of the applicable privacy issue that prevents disclosure. According to May 2004 data from the U.S. Bureau of Labor Statistics, the mean hourly rate for a computer programmer in the insurance business is $33.92. The amount of time necessary to implement system changes will vary greatly based upon the complexity of the system and current capabilities of the system. If an issuer has an existing system to provide eligibility information to providers, the system should include a function that will enable the health benefit plan issuer to evaluate whether privacy laws prevent disclosure of information, which is not a part of the cost that results from this proposal. Any capabilities that an existing system has to evaluate and identify privacy considerations will mitigate any cost this proposal imposes.

The cost to a health benefit plan issuer is not dependent upon the size of the health benefit plan issuer, but rather is dependent upon the number of persons to whom the health benefit plan issuer provides health coverage and the number of providers with whom the health benefit plan issuer contracts. Both small and

micro businesses and the largest businesses affected by these sections would incur the same cost per notice. The cost per hour of labor for any required computer system changes would not vary between the smallest and largest businesses. Therefore, it is the department's position that the adoption of these proposed sections will have no adverse economic effect on small or micro businesses. Regardless of the fiscal effect, it is neither legal nor feasible to waive or modify the requirements of this rule for small or micro businesses because the proposed amendments are either required by statute or would potentially result in certain providers not receiving necessary information regarding the effect of privacy laws on the provider's request based solely on the size of the health benefit plan issuer.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 6, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new sections are proposed under Insurance Code Chapter 1274 and §36.001. Chapter 1274 requires health benefit plan issuers to provide specific eligibility information to participating providers upon request. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code §§1274.001 - 1274.005

§21.3801. Scope and Applicability.

This subchapter applies to a health benefit plan issuer that enters into or renews a contract with a participating provider on or after January 31, 2006. The provisions of Insurance Code §1274.002 and this subchapter are not applicable to Medicaid and Children's Health Insurance Program (CHIP) plans provided by a health benefit plan issuer to persons enrolled in the medical assistance program established under Chapter 32, Human Resources Code, or the child health plan established under Chapter 62, Health and Safety Code.

§21.3802. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Enrollee--An individual who is eligible for coverage under a health benefit plan, including a covered dependent.

(2) Health benefit plan--A group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance coverage;

(D) coverage only for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides only dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) coverage issued as a supplement to liability insurance;

(K) workers' compensation insurance coverage or similar insurance coverage;

(L) automobile medical payment insurance coverage;

(M) a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U.S.C. Section 157;

(N) hospital indemnity or other fixed indemnity insurance coverage;

(O) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(P) liability insurance coverage, including general liability insurance and automobile liability insurance coverage; or

(Q) coverage that provides other limited benefits specified by federal regulations.

(3) Health benefit plan issuer--Any entity that issues a health benefit plan, including:

(A) a health maintenance organization operating under Insurance Code Chapter 843;

(B) an approved nonprofit health corporation that holds a certificate of authority under Insurance Code Chapter 844;

(C) an insurance company;

(D) a group hospital service corporation operating under Insurance Code Chapter 842;

(E) a fraternal benefit society operating under Insurance Code Chapter 885; or

(F) a stipulated premium company operating under Insurance Code Chapter 884.

(4) Health care provider--

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a pharmacist or dentist; or

(ii) a pharmacy, hospital, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

(5) Participating provider--

(A) a physician or health care provider who contracts with a health benefit plan issuer to provide medical care or health care to enrollees in a health benefit plan; or

(B) a physician or health care provider who accepts and treats a patient on a referral from a physician or provider described by subparagraph (A) of this paragraph.

(6) Physician--

(A) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes);

(C) a nonprofit health corporation certified under Chapter 162, Occupations Code;

(D) a medical school or medical and dental unit, as defined or described by §§61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(E) another entity wholly owned by physicians.

(7) Primary enrollee--The individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility under the health benefit plan.

§21.3803. Method for Requesting Eligibility Statements.

(a) Beginning January 31, 2006, a health benefit plan issuer shall, in writing, communicate to each participating provider that enters into or renews a contract with the health benefit plan issuer, the method or methods by which the provider may request an eligibility statement. The health benefit plan issuer may communicate the method or methods a provider may use to request an eligibility statement in existing materials, such as a provider manual, so long as the information is clearly identified and properly captioned with an underlined or bold-faced, or otherwise conspicuous heading.

(b) A health benefit plan issuer may accept a request for an eligibility statement by:

(1) telephone;

(2) internet website portal; or

(3) other electronic means.

§21.3804. Requests for Eligibility Statements.

(a) A participating provider may, prior to providing services to an enrollee, request an eligibility statement using a method designated by the health benefit plan issuer.

(b) A request under subsection (a) of this section must include:

(1) the enrollee's full name;

(2) the enrollee's relationship to the primary enrollee; and

(3) the enrollee's birth date.

(c) If the participating provider is seeking information concerning the enrollee's benefits under §21.3805(b)(2)(B) of this subchapter (relating to Requirement to Provide Eligibility Statements), the request must also include a description of the specific type or category of service.

§21.3805. Requirement to Provide Eligibility Statements.

(a) A health benefit plan issuer shall maintain a system to enable it to provide eligibility statements to participating providers using the information provided under §21.3804(b) and (c) of this subchapter (relating to Requests for Eligibility Statements). On receipt of a request for an eligibility statement that complies with §21.3804 of this subchapter, a health benefit plan issuer must provide an eligibility statement to the participating provider allowing the provider access to the information at the time of the enrollee's visit.

(b) If the health benefit plan issuer is unable to provide an eligibility statement, the health benefit plan issuer shall notify the participating provider and may request additional information to assist the health benefit plan issuer in providing an eligibility statement. A health benefit plan issuer may not use a request for additional information to satisfy the requirement that the issuer maintain a system to provide eligibility statements using the information described in §21.3804(b) and (c) of this subchapter.

(c) An eligibility statement provided under this section shall include information that will enable the participating provider to determine at the time of the request:

(1) the enrollee's identification and eligibility under the health benefit plan, including:

(A) the enrollee's identification number assigned by the health benefit plan issuer;

(B) the name of the enrollee and all covered dependents, if necessary to provide services to the patient;

(C) the birth date of the enrollee and the birth dates of all covered dependents, if necessary to provide services to the patient;

(D) the gender of the enrollee and the gender of each covered dependent, if necessary to provide services to the patient; and

(E) the current enrollment and eligibility status of the enrollee under the health benefit plan;

(2) the enrollee's benefits, including:

(A) excluded benefits or limitations, both group and individual; and

(B) if the participating provider included the information required by §21.3804(c) of this subchapter, whether the specific type or category of service is a benefit under the policy; and

(3) the enrollee's financial information, including:

(A) copayment requirements, if any; and

(B) the unmet amount of the enrollee's deductible or enrollee financial responsibility.

(d) The information required to be provided under this section is limited to information in the possession of and maintained by the health benefit plan issuer in the ordinary course of business at the time of a request for an eligibility statement.

(e) A health benefit plan issuer may not directly or indirectly charge a participating provider for an eligibility statement.

§21.3806. Privacy Issues.

A health benefit plan issuer may refuse to provide all or part of an eligibility statement if applicable state or federal law prevents the disclosure of an enrollee's or dependent's personally identifiable information to the requesting participating provider. A health benefit plan issuer that

refuses to provide all or part of an eligibility statement shall provide a response to the request for an eligibility statement indicating the reason(s) for refusing to provide the information. Within three days of refusing to provide an eligibility statement under this section, a health benefit plan issuer shall provide a written response indicating the reason(s) for refusing to provide the information and describing the particular state or federal law provision(s) that prevent the disclosure.

§21.3807. Effect of Eligibility Statement.

An eligibility statement provided under this subchapter is not a verification under §19.1724 of this title (relating to Verification).

§21.3808. Severability.

If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this subchapter shall remain in full effect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503030
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §368.8, §368.9

The Texas Water Development Board (board) proposes amendments to 31 TAC §368.8 and §368.9 concerning the Flood Mitigation Assistance Program. These amendments are proposed in order to provide clarification consistent with directives from the Federal Emergency Management Agency (FEMA).

The proposed new §368.8(c) is to account for a new process utilized by FEMA. Under the Pre-Disaster Mitigation program, FEMA may approve a grant but fund it with Flood Mitigation Assistance funds. In such instances, FEMA will direct the executive administrator of the board to execute a contract with the approved grantee even though the grantee did not apply for Flood Mitigation Assistance funds pursuant to Chapter 368. This proposed rule amendment merely explains that the board will execute Flood Mitigation Assistance contracts with a community as directed by FEMA. Current subsection (c) is amended to be subsection (d).

The proposed amendments to §368.9 have two purposes. The proposed amendment to §368.9(b) is simply to correct an error that exists in the current rule. The board had previously approved the language but an error caused the phrase "unless a time extension is granted by the board" to be left off of the official publication of the rule. This proposed amendment corrects that error.

The proposed new §368.9(c) has the same purpose as the proposed new §368.8(c). Under the Pre-Disaster Mitigation program, FEMA may approve a grant but fund it with Flood Mitigation Assistance funds. In such instances, FEMA will direct the executive administrator of the board to execute a contract with the approved grantee even though the grantee did not apply for Flood Mitigation Assistance funds pursuant to Chapter 368. This proposed rule amendment merely explains that the board will execute Flood Mitigation Assistance contracts with a community as directed by FEMA.

James LeBas, Chief Financial Officer, has determined that for the first five-year period these sections are in effect, there will be no additional fiscal implications on state and local government as a result of enforcement and administration of the sections. The Flood Mitigation Assistance program is a voluntary program and the board simply passes through federal funds for approved applications.

Mr. LeBas has also determined that for the first five years the amendments, as proposed, are in effect the public benefit anticipated as a result of enforcing the proposed sections will be to clarify and update the rules consistent with FEMA directives. Mr. LeBas has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Ron Pigott, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email at Ron.Pigott@twdb.state.tx.us, or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water §6.101 and Chapter 15, Subchapter F, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board and for administration of the research and planning fund and under Texas Government Code, Chapter 742 which provides for state coordination of local applications for federal funds.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15.

§368.8. Planning Grant Evaluation and Approval Process.

(a) - (b) (No change.)

(c) The executive administrator will also execute contracts with communities at the direction of FEMA. Usually, this occurs when a community has applied for FEMA's Pre-Disaster Mitigation program, through the Governor's Division of Emergency Management, and FEMA has approved the application and directed that FMA monies be used to fund it.

(d) [~~(c)~~] Work under each planning grant must be completed within three years of the date of execution of the contract.

§368.9. Project Grant Evaluation and Approval Process.

(a) (No change.)

(b) In its approval of a project to be recommended for FEMA project grant, the board shall specify a commitment period that shall begin to run with notification of FEMA's approval of the project and during which time the applicant must enter into a contract with the

board. If a contract has not been executed within the commitment period, the commitment shall expire, unless a time extension is granted by the board.

(c) The executive administrator will also execute contracts with communities at the direction of FEMA. Usually, this occurs when a community has applied for FEMA's Pre-Disaster Mitigation program, through the Governor's Division of Emergency Management, and FEMA has approved the application and directed that FMA monies be used to fund it.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 19, 2005.

TRD-200502934
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: September 20, 2005
For further information, please call: (512) 475-2052

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 423. FIRE SUPPRESSION
SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.3

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §423.3, concerning minimum standards for basic structure fire protection personnel certification, in Chapter 423, entitled Fire Suppression. The purpose of the proposed amendment is to clarify that one of the requirements for basic structure certification, when using reciprocity for International Fire Service Accreditation seals, is meeting the medical training requirements specified in §423.1(b), which is defined as successful completion of a commission recognized emergency medical course. Section 423.1(b) lists the recognized medical emergency training as follows: Texas Department of Health Emergency Medical Service Personnel certification training; an American Red Cross Emergency Response course, including the optional lessons and enrichment sections; an American Safety and Health Institute First Responder course; National Registry of Emergency Medical Technicians certification; or medical training deemed equivalent by the commission.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be fire fighters with medical emergency training serving the public, resulting in better public safety. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Texas Government Code, §419.008 and §419.022(a)(5) are affected by this rulemaking.

§423.3. Minimum Standards for Basic Structure Fire Protection Personnel Certification.

(a) In order to become certified as basic structure fire protection personnel, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Fighter I, Fire Fighter II, First Responder Awareness, and First Responder Operations and meet the medical requirements outlined in §423.1(b) of this title; or

(2) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200502994
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 239-4921

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CHAPTER 425. FIRE INSTRUCTORS

The Texas Commission on Fire Protection (TCFP) proposes the repeal of existing Chapter 425, entitled Fire Instructors, and new Chapter 425, entitled Fire Service Instructors. Existing Chapter 425 is comprised of §§425.1, 425.3, 425.5, 425.7, 425.9, 425.201, 425.203, 425.205, 425.207, 425.209, 425.301, and 425.401. Proposed new Chapter 425 consists of §§425.1, 425.3, 425.5, 425.7, 425.9, and 425.11, concerning minimum standards for certification as a Fire Service Instructor, Fire Service Instructor I, Fire Service Instructor II, Fire Service Instructor III, Master Fire Service Instructor III, and International Fire Service Accreditation Congress (IFSAC) seals for fire service instructors. Upon adoption, the effective date of new Chapter 425 and the repeal of existing Chapter 425 will be March 1, 2006.

The purpose of the repeal of existing Chapter 425 is to provide for a restructuring of the instructor certification rules into a new chapter with the following changes in organization and requirements. Certification categories have been redesignated with new titles. Fire Education Specialist requirements have been deleted as a separate subchapter, and have been incorporated into the various levels of Fire Service Instructor certification requirements. The existing training requirements have been replaced in the new chapter with a requirement of completion of the curricula for Fire Service Instructor I, II and III, with the exception of those individuals with degrees in education. The Associate Instructor designation will be phased out.

The proposed new chapter provides that training programs for fire service instructor certification that are started on or after March 1, 2006 must meet the curriculum and competencies based on National Fire Protection Association (NFPA) 1041. Upon adoption of the new chapter, current instructors certificates will have existing certificates renewed at the appropriate new certification level.

Proposed new §425.1, Minimum Standards for Fire Service Instructor Certification, provides guidelines regarding the effective date of the rule, standards for equivalency determinations regarding training (including IFSAC-accredited programs), and requirements related to education, training, certifications held, and requirements for continuing education.

Proposed new §425.3, Minimum Standards for Fire Service Instructor I Certification, provides requirements regarding years of experience, education (including a field examiner orientation course), and testing for Instructor I certification.

Proposed new §425.5, Minimum Standards for Fire Service Instructor II Certification, provides requirements regarding years of experience, prior certifications held, and education and testing for Instructor II certification.

Proposed new §425.7, Minimum Standards for Fire Service Instructor III certification, provides requirements regarding years of experience, prior certifications held, education, and testing for Instructor III certification.

Proposed new §425.9, Minimum Standards for Master Fire Service Instructor III Certification, provides requirements regarding prior certifications held, experience, and educational degrees held for Master Fire Service Instructor III certification.

Proposed new §425.11, International Fire Service Accreditation Congress Seal, provides the requirements and limitations on issuance and use of the IFSAC seal.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed repeal and new rules are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed repeal and new rules are in effect, the public benefit anticipated as a result of enforcing the repeal and new rules will be the assurance that fire service instructors in the state are trained to the highest standards. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed repeal and new rules.

Comments on the proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. FIRE SERVICE INSTRUCTOR CERTIFICATION

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.1. Minimum Standards for Fire Service Instructor Certification.

§425.3. Minimum Standards for Basic Fire Service Instructor Certification.

§425.5. Minimum Standards for Intermediate Fire Service Instructor Certification.

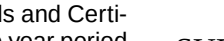
§425.7. Minimum Standards for Advanced Fire Service Instructor Certification.

§425.9. Minimum Standards for Master Fire Service Instructor Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200502996
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 239-4921



SUBCHAPTER B. FIRE EDUCATION SPECIALIST CERTIFICATION

37 TAC §§425.201, 425.203, 425.205, 425.207, 425.209

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to

propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.201. Minimum Standards for Fire Education Specialist Certification.

§425.203. Minimum Standards for Basic Fire Education Specialist Certification.

§425.205. Minimum Standards for Intermediate Fire Education Specialist Certification.

§425.207. Minimum Standards for Advanced Fire Education Specialist Certification.

§425.209. Minimum Standards for Master Fire Education Specialist Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200502997
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 239-4921

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SUBCHAPTER C. ASSOCIATE INSTRUCTOR CERTIFICATION

37 TAC §425.301

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.301. Minimum Standards for Associate Instructor Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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SUBCHAPTER D. INSTRUCTOR TRAINING COURSES

37 TAC §425.401

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.401. Instructor Training Courses.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9, 425.11

The new rules are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.1. Minimum Standards for Fire Service Instructor Certification.

(a) The effective date of this chapter shall be March 1, 2006. Training programs that are intended to satisfy the requirements for fire service instructor certification that are started on or after the effective

date of this chapter must meet the curriculum and competencies based upon NFPA 1041. All applicants for certification must meet the examination requirements of this section.

(b) Prior to being appointed to fire service instructor duties, all personnel must complete a commission approved fire service instructor program and successfully pass the commission examination pertaining to that curriculum.

(c) An out-of-state, military, or federal instructor training program may be accepted by the commission as meeting the training and experience requirements for certification as a fire service instructor if the training has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission-approved instructor course for that particular level of fire service instructor certification.

(d) An individual who holds a bachelors degree or higher in education from a regionally accredited educational institution or a teaching certificate issued by the Texas State Board of Education is considered to have training equivalent to the commission's curriculum requirements for Instructor I, II and III training.

(e) Individuals who hold Basic Fire Service Instructor or Basic Fire Education Specialist certification on the effective date of this chapter will, upon renewal, be renewed as a Fire Service Instructor I.

(f) Individuals who hold Intermediate Fire Service Instructor or Intermediate Fire Education Specialist or Associate Instructor certification on the effective date of this chapter will, upon renewal, be renewed as a Fire Service Instructor II.

(g) Individuals who hold Advanced Fire Service Instructor or Advanced Fire Education Specialist certification on the effective date of this chapter will, upon renewal, be renewed as a Fire Service Instructor III.

(h) Individuals who hold Master Fire Service Instructor or Master Fire Education Specialist certification on the effective date of this chapter will, upon renewal, be renewed as a Master Fire Service Instructor III.

(i) Personnel holding any level of fire service instructor certification must comply with the continuing education requirements specified in §441.21 of this title.

(j) A program that has been accredited by the International Fire Service Accreditation Congress (IFSAC) shall be considered for evaluation for equivalence to the commission's requirements for the corresponding level of certification.

§425.3. Minimum Standards for Fire Service Instructor I Certification.

(a) In order to become certified as a Fire Service Instructor I an individual must:

(1) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(2) have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(3) successfully pass the applicable commission examination as specified in Chapter 439 of this title; and

(4) have completed the field examiner orientation course as specified in Chapter 439 of this title.

(b) In order to qualify for the Fire Service Instructor I examination the individual must meet the years of experience and training requirements as outlined in this section.

§425.5. Minimum Standards for Fire Service Instructor II Certification.

(a) In order to become certified as a Fire Service Instructor II, an individual must:

(1) hold as a prerequisite a Fire Instructor I certification as defined in §425.3 of this title; and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(4) successfully pass the applicable commission examination as specified in Chapter 439 of this title.

(b) In order to qualify for the Fire Service Instructor II examination the individual must meet the years of experience and training requirements as outlined in this section.

§425.7. Minimum Standards for Fire Service Instructor III Certification.

(a) In order to become certified as a Fire Service Instructor III an individual must:

(1) hold as a prerequisite a Fire Instructor II Certification as defined in §425.5 of this title; and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) have completed the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(4) successfully pass the applicable commission examination as specified in Chapter 439 of this title; and either

(A) hold as a prerequisite an advanced structural fire protection personnel certification, an advanced aircraft fire protection personnel certification, advanced marine fire protection personnel certification, advanced inspector certification, advanced fire investigator, or advanced arson investigator certification; or

(B) have 60 college hours from a regionally accredited educational institution; or

(C) hold an associate degree from a regionally accredited educational institution.

(b) In order to qualify for the Fire Service Instructor III examination the individual must meet the years of experience and training requirements as outlined in this section.

§425.9. Minimum Standards for Master Fire Service Instructor III Certification.

In order to become certified as a Master Fire Service Instructor III the individual must:

(1) hold as a prerequisite a Fire Service Instructor III certification; and

(2) be a member of a paid, volunteer, or regulated non-governmental fire department; or a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) hold as a prerequisite a master structural fire protection personnel certification, a master aircraft rescue fire fighting personnel certification, master marine fire protection personnel certification, master inspector certification, master fire investigator certification, or master arson investigator certification; or

(4) hold a bachelors degree or higher in education from a regionally accredited educational institution or a teaching certificate issued by the Texas State Board of Education.

§425.11. International Fire Service Accreditation Congress Seal.

(a) Individuals who hold basic fire service instructor or basic fire education specialist certification prior to the effective date of this chapter or individuals completing a commission-approved Fire Service Instructor I training program and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor I by making application to the commission and paying the applicable fee.

(b) Individuals who hold intermediate fire service instructor, intermediate fire education specialist, or associate instructor certification prior to the effective date of this chapter or individuals holding an IFSAC Instructor I certification, completing a commission-approved Fire Service Instructor II training program, and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor II by making application to the commission and paying the applicable fee.

(c) Individuals who hold advanced or master fire service instructor or advanced or master fire education specialist certification prior to the effective date of this chapter or individuals holding an IFSAC Instructor II certification, completing a commission-approved Fire Service Instructor III training program, and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor III by making application to the commission and paying the applicable fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 239-4921

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

The Texas Commission on Fire Protection (TCFP) proposes amendments to §429.3 and §429.203, concerning minimum standards for basic fire inspector certification and minimum standards for basic fire inspector certification (new track), in Chapter 429 entitled Minimum Standards for Fire Inspectors. The purpose of the amendments is to update the list of classes used to fulfill the training program requirement for fire inspector certification.

The amendments remove the Fundamentals of Fire Protection and Fundamentals of Speech classes and add a Fire Prevention Codes and Investigations class as an option for the Fire Prevention class; and reduce the total semester hours from 21 to 15. The Building Code class and Building Construction class may be combined into a single three semester hour class, in which case the total semester hours may be reduced to 12.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that fire protection personnel will receive the most up to date and relevant training. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005

37 TAC §429.3

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§429.3. Minimum Standards for Basic Fire Inspector Certification.

(a) In order to be certified by the commission as a Basic Fire Inspector an individual must complete a commission approved fire inspection training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(1) - (2) (No change.)

(3) successful completion of the following college courses: [~~Fundamentals of Fire Protection, 3 semester hours; Fire Protection Systems, 3 semester hours; Fire Prevention, 3 semester hours; Building Code, 3 semester hours; Building Construction, 3 semester hours; Hazardous Materials, 3 semester hours; Fundamentals of Speech, 3 semester hours; Total semester hours, 21*. *NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 18. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials; or~~]

(A) Fire Protection Systems, three semester hours;

(B) Fire Prevention, three semester hours; or Fire Prevention Codes and Investigations, three semester hours;

(C) Building Code, three semester hours;

(D) Building Construction, three semester hours;

(E) Hazardous Materials, three semester hours.(Total semester hours, 15*. *NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 12. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials); or

(4) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 239-4921

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§429.203. Minimum Standards for Basic Fire Inspector Certification--New Track.

(a) In order to be certified as a basic fire inspector an individual must:

(1) (No change.)

(2) complete a commission-approved Basic Fire Inspector program and successfully pass the commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(A) - (B) (No change.)

(C) successful completion of the following college courses: [~~Fundamentals of Fire Protection, 3 semester hours; Fire Protection Systems, 3 semester hours; Fire Prevention, 3 semester hours; Building Code, 3 semester hours; Building Construction, 3 semester hours; Hazardous Materials, 3 semester hours; Fundamentals of Speech, 3 semester hours; Total semester hours, 21*. *NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 18. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials); or~~]

(i) Fire Protection Systems, three semester hours;

(ii) Fire Prevention, three semester hours; or Fire Prevention Codes and Investigations, three semester hours;

(iii) Building Code, three semester hours;

(iv) Building Construction, three semester hours;

(v) Hazardous Materials, three semester hours. (Total semester hours, 15*. *NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 12. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials); or

(D) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Director
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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.3

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §435.3, concerning self-contained breathing apparatus (SCBA), in Chapter 435, entitled Fire Fighter Safety. The purpose of the proposed amendment is to have fire departments follow the manufacturer's recommendations concerning inspection and maintenance of each self-contained breathing apparatus that an entity owns.

The proposed amendment deletes previously developed agency standards in paragraphs (3) and (8) that mandate the frequency of SCBA inspection, describes the components of an acceptable inspection, and mandates the frequency and components of acceptable annual testing of each SCBA, including a flow test. The proposed requirement is for departments to follow the manufacturer's recommendation in those areas. A new paragraph (6) has been added that provides that fire suppression entities must maintain and provide upon request by the commission, standard operating procedures regarding the selection, care, and maintenance of SCBA that comply with National Fire Protection Association Standard 1852, 2002 Edition.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be an increased efficiency in the ability of the fire service to maintain their SCBA according to manufacturer's recommendations. This will ultimately result in greater safety for fire fighters in the state. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days from the publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties, and Texas Government Code, §419.041, which provides the TCFP with the authority to set requirements for self-contained breathing apparatus use, including safety standards, maintenance, testing, and regular inspection.

Texas Government Code, §419.041 is affected by the proposed rulemaking.

§435.3. Self-contained Breathing Apparatus.
The employing entity shall:

(1) - (2) (No change.)

[~~(3) ensure that an SCBA that is assigned to an individual user or in-service apparatus be inspected at the beginning of each duty period and where an SCBA is not assigned to an individual user or in-service apparatus but is available for immediate use or a duty period, the inspection shall be performed at least weekly and shall include a check of the entire unit for deteriorated components, air tightness of cylinders and valves, gauge comparison, reducing valve and bypass valve operation, and check of the regulator, exhalation valve, and low-air alarm. All other SCBA shall be inspected prior to being placed into service. The inspection shall comply with the minimum requirements of the National Fire Protection Association. The SCBA shall be clean and ready for service;~~]

(3) [~~(4)~~] develop an air quality program that complies with NFPA 1989 Standard on Breathing Air Quality for Fire and Emergency Services Respiratory Protection (2003 edition);

[~~(5) develop procedures to ensure that all bottles used on self-contained breathing apparatus are tested as required by the manufacturer and the Department of Transportation;~~]

(4) [~~(6)~~] maintain and supply upon request by the commission, records and reports documenting compliance with commission requirements concerning self-contained breathing apparatus and breathing air. Records [~~a record~~] of all tests shall be made and the records [~~record~~] shall be retained for a period of no less than three years;

(5) [~~(7)~~] maintain and provide upon request by the commission, a departmental standard operating procedure regarding the use[~~, selection, care, and maintenance~~] of self-contained breathing apparatus; and

(6) maintain and provide upon request by the commission, a department standard operating procedure regarding the selection, care, and maintenance of self-contained breathing apparatus that complies with NFPA 1852 Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA) 2002 Edition.

[~~(8) ensure that at least annually, the face piece, regulator, end of service indicator(s), hoses, and cylinder valve are tested for proper function on test equipment approved by the manufacturer. The test of the regulator shall include a flow test. This test shall be performed in a manner prescribed by the manufacturer and by personnel authorized by the manufacturer to perform such test and shall meet the minimum requirements for testing as required by the National Fire Protection Association.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.3, 439.13

The Texas Commission on Fire Protection (TCFP) proposes amendments to §439.3 and §439.13 concerning definitions and testing for proof of proficiency, in Chapter 439, entitled Examinations for Certification. The purpose of the proposed amendment to §439.3 is to describe changes to the definition of "Field Examiner". The purpose of the proposed amendment to §439.13 is to remove language regarding the procedure by which an individual returning from military service can renew

his or her certification, and place that language in the rule concerning renewals.

The proposed amendment to §439.3 (the definition of "Field Examiner") adds to the requirements for field examiner certification the following: possession of a Fire Instructor certification; the completion of the on-line commission field examiner orientation; and successful completion of the orientation examination. The proposed amendment also changes the time period in which a field examiner must repeat the examiner orientation course from three years to two years.

The proposed amendment to §439.13(c) removes language describing the procedure an individual would follow to renew his or her expired certification after returning from activation to military service. That language has been added to the adopted amendment to §437.5 of this title (relating to Renewal Fees) published in the July 22, 2005, issue of the *Texas Register*.

These proposed amendments are in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendment to §439.3 will be the assurance that skills examinations will be administered by field examiners who have received the highest levels of training, due to the fact that they now must hold fire instructor certification and complete continuing education at a greater frequency. The public benefit anticipated as a result of enforcing the amendment to §439.13 will be less confusion regarding the procedures an individual must follow to renew an expired certification when returning from activated military service, due to the relevant rule text being transferred to a more logical place in the commission's rules (§437.5). There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify fire protection personnel instructors under conditions that the commission prescribes; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational and training standards for admission to employment as fire protection personnel.

Texas Government Code, §419.022 and §419.028 are affected by the proposed amendments.

§439.3. Definitions.

The following words and terms used in this chapter have the following definitions unless the context clearly indicates otherwise.

(1) - (7) (No change.)

(8) Field examiner--An individual authorized to evaluate performance skills in commission approved curricula [~~that has successfully completed the commission administered field examiner orientation and has received a Certificate of Completion from the commission~~]. The [~~An approved~~] field examiner must possess a Fire Instructor Certification, complete the on-line commission field examiner orientation, pass the orientation examination, and sign an agreement to comply with the commission's testing procedures. [~~The field examiner must as a minimum, possess a Fire Instructor Certification~~]. The field examiner must be approved by the commission to instruct all subject areas identified in the curriculum that they will be evaluating. The field examiner will [~~must~~] work under the supervision of a staff examiner during a commission administered examination [~~to administer commission examinations, except when evaluating performance skills during an approved basic certification school~~]. The field examiner must repeat the [~~receive an~~] examiner orientation [~~course~~] every two [~~three~~] years and submit [~~administered by a certified instructor authorized by the commission or evaluate at least 50 individual state-administered performance skill examinations every three years. Prior to renewal, the field examiner must obtain, sign and return to the commission~~] a new letter of intent.

(9) (No change.)

§439.13. Testing for Proof of Proficiency.

(a) - (b) (No change.)

(c) An individual who is called to active military duty in accordance with applicable federal law is not considered to have a break in service. That person would not have to complete the examination requirement [~~upon return to employment as a fire protection personnel. To obtain a new certificate, the individual must submit the renewal fee and documentation for 20 hours of continuing education~~].

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.3, §441.5

The Texas Commission on Fire Protection (TCFP) proposes amendments to §441.3 and §441.5, concerning continuing education definitions and general continuing education requirements, in Chapter 441 entitled Continuing Education. The purpose of the amendment to §441.3 is to clarify the rule language regarding Track A and Track B lists of acceptable training. The purpose of the proposed amendment to §441.5 is to clarify rule language regarding: renewal periods; procedures for individuals returning from military service; and what types of documentation of continuing education are acceptable.

The proposed amendment to §441.3 rewords the definitions in Track A and Track B in paragraphs (3) and (4) by deleting references to "appointed disciplines" and substituting the words "certifications held." The proposed amendment also adds language that makes explicit that Track B training is defined as fire service training or education that is not contained in the commission's certification curriculum manual for certifications held.

The proposed amendment to §441.5 substitutes the words "applicable renewal periods" for the words "current renewal period" in subsections (j) and (k) and adds a new subsection (n) which states that a copy of a certificate of completion is acceptable documentation of continuing education for that certification renewal period, if the individual has completed a commission-approved academy in the 12 months prior to his or her certification expiration date.

The TCFP has determined the amendment and new rule to be in compliance with Texas Government Code, §419.022(b).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be as follows. For the proposed amendment to §441.3, the public benefit will be a more clear understanding of the kinds of training on the Track A and Track B lists. For the proposed amendment to §441.5, the public benefit will be a more clear understanding of the certification renewal process.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of these proposals in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Texas Government Code, §§419.008, 419.022, and 419.032(b) are affected by this rulemaking.

§441.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Track A--Training intended to maintain previously learned skills as stated in the commission certification curriculum manual for the certifications held [~~appointed discipline~~].

(4) Track B--Fire service training or education [~~Training~~] intended to develop new skills that are not contained in the commission's certification curriculum manual for certifications held [~~in an appointed discipline~~] .

§441.5. Requirements.

(a) - (i) (No change.)

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for a cumulative period of six months or longer due to a documented illness, injury, or activation to military service may be exempted from the continuing education requirement for the applicable [~~current~~] renewal period(s) [~~period~~]. Such exemptions shall be reported by the head of the department to the commission at renewal time.

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel appointed to that discipline, may be exempted from the continuing education requirement for the applicable [~~current~~] renewal period(s) [~~period~~]. Commission staff shall determine the exemption using documentation of the illness or injury that cumulatively lasts six months or longer, which is provided by the individual and the individual's treating physician or by documentation of activation to military service.

(l) - (m) (No change.)

(n) If an individual has completed a commission approved academy in the 12 months prior to his or her certification expiration date, a copy of that certificate of completion will be acceptable documentation of continuing education for that certification renewal period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503005
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 4, 2005
For further information, please call: (512) 239-4921

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §21.1083

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §21.1083 which appeared in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2642).

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200502991
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: July 22, 2005
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 206. GUARANTEED STUDENT LOANS

22 TAC §206.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Texas Funeral Service Commission has been automatically withdrawn. The new section as proposed appeared in the January 14, 2005 issue of the *Texas Register* (30 TexReg 70).

Filed with the Office of the Secretary of State on July 21, 2005.

TRD-200502966

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.52, §20.61

The Texas Ethics Commission adopts new §20.52 and an amendment to §20.61, relating to rules that would require the description of a political expenditure for travel outside of Texas to include detailed information regarding travel. The rules are adopted without changes to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3073) and will not be republished.

Section 20.52 requires the description of an in-kind political contribution for travel outside of Texas to include the name of the persons traveling on whose behalf the travel was accepted and certain detailed information regarding the travel.

Section 20.61 requires the description of a political expenditure for travel outside of Texas to include the name of the persons traveling on whose behalf the expenditure for travel was made and certain detailed information regarding the travel.

No comments were received regarding adoption of the new rule and amendment.

The amendment and new rule are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2005.

TRD-200502965
David A. Reisman
Executive Director
Texas Ethics Commission
Effective date: August 10, 2005
Proposal publication date: May 27, 2005
For further information, please call: (512) 463-5800

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PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 113. PROCUREMENT DIVISION

SUBCHAPTER A. PURCHASING

1 TAC §113.4

The Texas Building and Procurement Commission adopts amendments to 1 TAC §113.4, Centralized Master Bidders List. The amendments are adopted with no changes to the text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2627).

The amendments revise the rule to correct errors in the rule title and in the name of the catalog information systems vendors. The amendments add more specificity to the citation of statutory authority for removing a vendor from the Centralized Master Bidders List (CMBL).

The rule title is amended to include "Master" to reflect the full and correct name of the CMBL. Subsections (a), (d)(1), (f), and (g) are amended to change any reference to the agency from commission to TBPC.

Subsection (a) is amended to correct the reference to information system vendors to the currently accepted catalog information systems vendors (CISV)

Subsection (d)(3) is amended to give more specific statutory citations relating to the removal of a vendor from the CMBL. Government Code §2155.070 gives TBPC the authority to act against a vendor who delivers goods that do not meet contract specification. Government Code §2155.077 gives TBPC the authority to debar a vendor from state contracts, gives the reasons acceptable for debarment and prescribes that the TBPC promulgate procedures by which debarment is decided and the length of time of the debarment. The amendments ensure that the entire debarment process is referenced.

The period for public comments ended June 6, 2005. There were no comments.

The amendments to §113.4 are adopted under the authority of the Government Code §2152.003, which provides the Texas Building and Procurement Commission with the authority to promulgate rules necessary to implement the section.

The following codes are affected by the rule: Government Code, §§2152.003, 2155.070, 2155.077, 2155.262 - 2155.270 and 2157.062.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503007
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Effective date: August 11, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 463-4257

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1 TAC §113.9

The Texas Building and Procurement Commission adopts amendments to 1 TAC §113.9, Contract Administration, with no changes to the text as published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3187).

The amended rule removes unneeded debarment language because new debarment rules, §§113.101 - 113.108, are being adopted concurrently and published elsewhere in this issue. Also, "TBPC" is substituted for "Commission" when referring to the agency.

Subsections (a)(1) - (2), (b), (c)(1) and (4), (d)(2) and new subsection (d)(3) reflect the change from Commission to TBPC when referring to the agency.

Original subsection (d)(3) contained information regarding debarment and reinstatement. This section is deleted because new rules on debarment are being adopted concurrently and may be found in §§113.101 - 113.108. Removing the language in subsection (d)(3) clarifies the rules and improves the public's understanding of the debarment process.

The period for public comments ended July 5, 2005. There were no public comments.

The amendments are adopted under the authority of the Government Code, §§2152.001, 2152.003, and 2156.077.

The following code is affected by the rule: Government Code, §2155.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503008
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Effective date: August 11, 2005
Proposal publication date: June 3, 2005
For further information, please call: (512) 463-4257

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SUBCHAPTER C. SPECIFICATION

1 TAC §113.33, §113.34

The Texas Building and Procurement Commission (TBPC) adopts amendments to 1 TAC §113.33, concerning Selection of Items for Development of Texas Uniform Standards and Specifications, and §113.34, concerning Development of Texas Uniform Standards and Specifications. Section 113.33 is adopted with changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2628). An error in the citation to the Texas Government Code in §113.33(1)(B) was corrected. Section 113.34 is adopted without changes to the proposed text as published.

The amendments reflect current statutory responsibilities for developing Texas school bus specifications and clarify the role and responsibilities of TBPC in procurement of school buses, pursuant to Local Government Code, §271.083. The amendments also include minor revisions to remove a gender related reference to purchasers and to reflect the correct name of the Commission and division that is responsible for procurement. Section 113.33(1)(A) places the responsibility for the development of specifications for safety standards with the Texas Department of Public Safety and the Texas Education Agency and stipulates that the specifications are to be referenced in solicitations and made a part of any contract awarded by TBPC as a result of a requisition received from a school district. The specifications are also to be posted on the TBPC website.

Section 113.33(1)(B) is amended to change "commission" to "TBPC" when referring to the agency.

Section 113.33(2) is amended to reflect the correct name of the procurement division.

Section 113.33(3) is amended to remove a gender-specific reference to purchasers.

Section 113.34(c)(1) is amended to reflect the correct name of the procurement division.

The period for public comments ended June 6, 2005. There were no public comments.

The amendments to §113.33 and §113.34 are adopted under the authority of the Government Code, §2152.003 which provides the TBPC with the authority to promulgate rules necessary to implement procurement related statutes.

The following codes are affected by the adoption: Government Code, §§2155.066, 2155.068, 2155.069, 2155.070, 2155.204; Local Government Code, §271.083; Education Code, §34.001; and Transportation Code, §547.7015.

§113.33. Selection of Items for Development of Texas Uniform Standards and Specifications.

Items are selected for specification development by or through one or more of the following methods.

(1) Required by statute.

(A) School buses. Pursuant to the Texas Education Code, §34.002, the Texas Department of Public Safety, with advice from the Texas Education Agency, establishes safety standards for school buses used to transport students. Pursuant to the Texas Education Code, §34.001, specifications developed by the Texas Department of Public Safety in compliance with the Texas Transportation Code, §547.7015, shall be referenced in solicitations and made a part of any contract awarded by the TBPC as result of a requisition received from a school district pursuant to the Texas Local Government Code, §271.083. For the convenience of qualified purchasing entities the specifications shall be posted on the TBPC website.

(B) Prison-made products and raw materials. Pursuant to Texas Government Code, Subtitle G, Subchapter B, §497.027, an article or product produced under Subchapter B must meet specifications established by the TBPC that are in effect when the article or product is produced.

(2) Requests from using agencies. If a using agency finds that it is having difficulty in obtaining a certain item to meet a particular requirement, then the agency can communicate this need to the standards and specifications section of the Procurement Division.

(3) Requests from purchasers. If a state purchaser is having difficulty in securing bids on a particular item in the absence of adequate uniform standards and specifications, the purchaser may request the standards and specification section to investigate the feasibility of developing a uniform standard and specification to cover the purchase of this item.

(4) Requests from vendors and/or bidders. Bidders may petition the standards and specification section to ascertain the feasibility of developing a specification on an article bid by agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503012
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Effective date: August 11, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 463-4257

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SUBCHAPTER F. VENDOR PERFORMANCE AND DEBARMENT PROGRAM

1 TAC §§113.101 - 113.108

The Texas Building and Procurement Commission (TBPC) adopts new 1 TAC §§113.101 - 113.108, concerning vendor performance and debarment program, with no changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2629). TBPC adopts the new rules to protect the interests of the state and to enhance public confidence in the integrity of the state's procurement policies and practices. The rules replace current §113.102, concerning vendor performance and debarment which is contemporaneously being repealed in this issue of the *Texas Register*.

The new rules provide more detailed notice of the factors TBPC will consider when making a decision to debar a vendor. Vendors doing business with the state will have a clearer understanding of the expected performance and ethical standards. The rules also provide procedures to ensure that the vendor has an opportunity to be heard prior to a finding by TBPC.

Section 113.101, concerning the purpose and applicability these rules, describes the reasons for the rules and that they apply to all procurement conducted under the authority of Government Code, Title 10, Subtitle D.

Section 113.102, concerning definitions, provides definitions for terms not otherwise defined by statute or in §113.2 and, in the case of the debarment definition, adds language to the definition in §113.2.

Section 113.103, concerning protecting the state's interest when there is a failure to meet specifications, lists the factors TBPC shall consider when proposing an action based on a vendor's failure to meet specifications.

Section 113.104, concerning protecting the state's interest when there is a failure to meet contract requirements, contains the factors TBPC shall consider when evaluating a vendors performance measured by the vendor performance tracking system and the categories listed therein.

Section 113.105, concerning debarment, describes actions TBPC may take and the general reasons for debarment including the time periods of debarment. Section 113.105(a) describes TBPC's potential actions. Section 113.105(b) requires notice of potential action. Section 113.105(c) provides that TBPC may assess actual damages and costs against a vendor who fails to perform as specified under a contract. Section 113.105(d) provides that a vendor may be debarred upon finding that the vendor has engaged in the conduct prohibited by that subsection. Section 113.105(e) provides that a vendor may be debarred upon a finding that the vendor's performance was substandard. Section 113.105(f), (g), and (h), concerning failure to meet specifications, describe actions upon a first and subsequent failures to meet specifications.

Section 113.106, concerning procedures for investigations and debarment, provides that TBPC shall provide notice to the vendor of a proposed action and also describes the time periods for vendor response, investigations, and TBPC finding. The section also contains mitigating circumstances and remedial measures TBPC may consider when determining the appropriate action.

Section 113.107, concerning request for review, provides a process for a review of TBPC action. The Executive Director conducts the review and has discretion to revise the finding.

Section 113.108, concerning the vendor performance tracking system, describes the parameters for the system and requires state agencies to report vendor performance for contracts over $25,000.

The public comment period ended June 6, 2005. There were no public comments.

The new §§113.101 - 113.108 are adopted under the authority of the Government Code, §155.070 and §2155.077(c).

The following codes are affected by this adoption: Government Code, Chapters 2156, 2157, 2158, 2161, 2162, 2163, 2165, 2166, 2167, 2170, 2171, 2172, 2175, 2177; Local Government, Chapter 271; and Transportation Code, Chapters 223 and 224.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503010
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Effective date: August 11, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 463-4257

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1 TAC §113.102

The Texas Building and Procurement Commission (TBPC) adopts the repeal of 1 TAC §113.102, concerning vendor performance and debarment, with no changes to the proposal

as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2633). The section is repealed because it is being replaced by new §§113.101 - 113.108, which are adopted and published contemporaneously elsewhere in this issue of the *Texas Register*.

Section 113.102 is no longer necessary because of the adoption of the new rules. The new rules will provide the public with more detail about TBPC's debarment process.

The public comment period ended June 6, 2005. There were no public comments.

The repeal of §113.102 is adopted under the authority of the Government Code, §2152.003 and §2155.077.

The following codes are affected by this adoption: Government Code, Chapters 2156, 2157, 2158, 2161, 2162, 2163, 2165, 2166, 2167, 2170, 2171, 2172, 2175, 2177; Local Government Code, Chapter 271; and Transportation Code, Chapters 223 and 224.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503009
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Effective date: August 11, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 463-4257

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SUBCHAPTER G. BUYING UNDER CONTRACT ESTABLISHED BY AN AGENCY OTHER THAN THE TEXAS BUILDING AND PROCUREMENT COMMISSION

1 TAC §113.125, §113.126

The Texas Building and Procurement Commission (TBPC) adopts amendments to 1 TAC §113.125, concerning Buying under Contract Established by an Agency Other Than Commission, and §113.126, concerning Purchasing from Interstate Compacts and Cooperative Agreements with no changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2634).

The adopted amendments update the current rules to reflect the correct name of the Commission in both the rules and the subchapter Table of Contents. The revisions add clarity and a sequential approach to the notification process for purposes under another agency's contract and the responsibilities of the Commission.

In the heading for Subchapter G, the name of the agency is changed from General Services Commission to Texas Building and Procurement Commission to be in compliance with the statutes.

Section 113.125(a) is amended to change the name of the agency from General Services Commission (GSC) to Texas Building and Procurement Commission (TBPC).

New §113.125(b) is adopted to replace the existing subsection. The new language describes the process an agency must use to justify a request to make purchases under another agency's contract.

Section 113.125(c) and (d) are amended to change the agency reference from Commission to TBPC.

Section 113.125(c) is also amended to add overall best value as criteria to be used when considering the authorization of a request to purchase of another state agency contract.

Section 113.126(a) and (b) is amended to change the agency reference from Commission to TBPC.

Section 113.126(b) is amended to reflect the current title of the procurement director.

Section 113.126(b) is amended to also give the Executive Director the authority to approve proposals regarding cooperative purchases.

The public comment period ended June 6, 2005. There were no public comments.

The amendments to §113.125 and §113.126 are adopted under the authority of the Government Code, §2152.003 which provides the TBPC with the authority to promulgate rules necessary to implement procurement related statutes.

The following codes are affected by the adoption: Government Code, §§2155.079, 2155.132 and 2155.502.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503013
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Effective date: August 11, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 463-4257

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Health and Human Service Commission (HHSC) adopts amendments and repeals in Chapter 353, Medicaid Managed Care.

HHSC adopts the following amendments: §353.1, Rules of Other Agencies; §353.2, Definitions; §353.3, Experience Rebate in the STAR and STAR+PLUS Programs; §353.101, Purpose; §353.102, Provider and Member Education Programs Generally; §353.104, Member Education Program; §353.105, Provider Education Program; §353.201, Purpose; §353.202, Member Bill of Rights; and §353.203, Member Bill of Responsibilities; §353.403, Enrollment; §353.405, Marketing; §353.407, Selection of Managed Care Organization (MCOs); §353.409, Scope of Services; §353.411, Accessibility of Services; §353.413, Managed Care Benefits and Services for Children

Under 21 Years of Age; §353.415, Member Complaint Procedures and §353.417, Quality Improvement, without changes to the proposed text as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 173) and will not be republished. Section 353.419, Financial Standards, is adopted with minor changes to the proposed text as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 173). The text of the rule will be republished.

HHSC adopts the following repeals without changes to the proposal as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 173): §353.103, Contract Compliance; §353.204, Construction; §353.301, Purpose; §353.302, Pilot Program Study; §353.303, Federal Waiver; §353.304, Expiration; §353.401, General Provisions; and §353.402, Definitions. The text of the rules will not be republished.

HHSC amended Chapter 353, Medicaid Managed Care, as outlined in this section-by-section summary. Chapter 353, Subchapter A, General Provisions, describes general information for the Medicaid Managed Care program. Amended section §353.1, Rules of Other Agencies, describes the criteria a health maintenance organization (HMO) participating in Medicaid must meet, in addition to those in Chapter 353. The amended §353.1 updates the title of the rule and the references contained within the rule. In addition, new language is added to this section that is deleted from other rules within Chapter 353 for the purpose of streamlining the rules. Section §353.2, Definitions, updates and re-orders the definitions and terms used throughout Chapter 353. The amended §353.3, Experience Rebate in the STAR and STAR+PLUS Programs, adds new language to clarify the intent of the rule and updates the reimbursement methodology.

Subchapter B, Provider and Member Education Programs, describes the provider and member education requirements for the Health Maintenance Organizations (HMOs) participating in Medicaid. Amended rule §353.101, Purpose, outlines the authority for establishing the requirements in this subchapter. The amendments update the references to legacy agencies listed in the rule.

The amended rule §353.102, Provider and Member Education Programs Generally, requires HMOs to offer education programs to providers and members. The proposed amendments to this rule update the references.

Amended rule §353.103, Contract Compliance, establishes that HMOs must provide education programs for providers and members. The Commission proposes to repeal this rule; new language regarding contract compliance is included in §353.1, Purpose.

Amended rule §353.104, Member Education Program, describes the components for the member education programs required of an HMO participating in Medicaid. The amendments to the rule add clarifying language, including language concerning the HMO's obligation to educate members about their right to request a fair hearing.

The amended rule §353.105, Provider Education Program, describes the required elements for provider education regarding Medicaid Managed Care. The amendments to the rule update references and add new language for clarity.

Subchapter C, Member Bill of Rights and Responsibilities, sets out the requirements for these documents. Amended rule §353.201, Purpose, describes the Commission's authority to adopt rules for the Member Bill of Rights and Responsibilities. The proposed amendment to the rule updates the statutory reference for HHSC's authority to adopt rules.

HHSC mandates that HMOs provide a written document that describes the member's bill of rights. The bill of rights for clients participating in the Medicaid Managed Care program is attached to §353.202, Member Bill of Rights. The amendment adds the language contained in the Member Bill of Rights to the rule to assist in distribution of consistent information to members by the HMOs.

The amended rule §353.203, Member Bill of Responsibilities, sets out the requirement that each HMO must provide a Bill of Responsibilities to all Members. The amendment adds the mandatory language that must be included in the Bill of Responsibilities to aid in distribution by the HMOs of consistent information to the members.

Repealed rule §353.204, Construction, distinguishes the requirements of Subchapter C, Member Bill of Rights and Responsibilities, for contracts in place prior to August 1, 1996, and those contracts that were renewed or extended after August 1, 1996. The Commission repealed this section because it is no longer necessary.

Subchapter D, Telephone-Based Health Care Systems Pilot Program, describes a Medicaid Managed Care pilot program offering a telephone-based health care system. The pilot program was mandated by S.B. 10, 74th Legislature, Regular Session, 1995. The Commission repealed Subchapter D because the pilot program expired January 1, 1998.

Subchapter E, Standards for STAR and STAR+PLUS Programs, sets forth the standards for the STAR and STAR+PLUS programs. HHSC repealed rule §353.401, General Provision, which identified rules other than those of HHSC with which Medicaid HMOs must comply. The language has been updated and restated in amended rule §353.1, Purpose. In addition, HHSC repealed §353.402, Definitions. The language in this rule is revised, updated, and incorporated into amended rule §353.2, Definitions.

The criteria and standards for enrollment in a Medicaid managed care organization are described in rule §353.403. The amended rule §353.403, Enrollment, removes language that makes separate reference to the Primary Care Case Management (PCCM) program. PCCM is included in the term "health plan" for the purposes of this Chapter only. The amendment to the rule also replaces the term "department" with the term "Commission," as contracts are now with HHSC, not the Texas Department of Health. In addition, the amendments set forth criteria under federal law for participating in Medicaid managed care.

The amended rule §353.405, Marketing, sets forth the requirements for HMOs with regard to marketing plans, materials, and practices. The Commission amends the rule by replacing the term "department" with the term "Commission," as contracts are with HHSC, not the Texas Department of Health.

The requirements for HMOs, subcontractors of HMOs, and the required compliance with policy set forth by the Commission are listed in rule §353.407, Selection of Health Maintenance Organizations (HMOs). HHSC amended this section by revising the title of the rule to more appropriately describe the intent of the rule. In addition, the amendments replace the term "department" with the term "Commission" and update references within the rule.

Services HMOs must provide are described in §353.409, Scope of Services. The Commission amended §353.409, by replacing

the term "department" with "Commission." The amendment requires Medicaid HMOs to provide the services that are defined in this title under Chapter 354, Medicaid Health Services. The amendment also deletes language that is no longer necessary because of the addition of the definition of value-added services.

The amended rule §353.411, Accessibility of Services, outlines an HMO's obligation to provide services that are accessible to clients. HHSC amended the rule by replacing the term "department" with the term "Commission." In addition, the amendments add language requiring HMOs to ensure no member must travel more than thirty miles to access "acute care hospitals."

The HHSC amended rule §353.413, Managed Care Benefits and Services for Children under 21 Years of Age. This rule outlines the HMOs' obligations with regard to services provided to children less than 21 years of age. The amendment replaces the term "department" with "Commission" and "STAR" with "Medicaid Managed Care."

Procedures HMOs are mandated to follow with regards to complaints from members are defined in §353.415, Member Complaint Procedures. HHSC amended rule §353.415 by replacing the term "department" with the term "Commission" and the word "recipients" with "clients." The amendment also adds language requiring inclusion of the right to a fair hearing in the HMOs' notice to the clients.

The amended rule §353.417, Quality Improvement, identifies the expectations of the state pertaining to quality improvement programs for the HMOs. The Commission amended this section by updating the title to "Quality Assessment and Performance Improvement." In addition, the amendments include revised language to update the standards, references, and requirements for the HMOs' quality improvement program.

The Commission amended rule §353.419, Financial Standards by replacing the words "department" with "Commission" and "STAR" with "Medicaid Managed Care." The amendments update the language about profit sharing arrangements and add a reference to §353.3, which discusses experience rebates.

HHSC received comments regarding the proposed rule during the comment period from the Coalition for Nurses in Advanced Practice, the Office of Inspector General, and the Texas Association for Home Care, and an individual. A summary of the comments and HHSC's responses follows.

Comment:

HHSC received a comment concerning rule §353.2(2), Definitions, from the Coalition for Nurses in Advanced Practice requesting that the Health and Human Services Commission revise the proposed definition of acute care, §353.2(2), published in the January 21st, 2005, issue of the *Texas Register*. The coalition requested that the language "under the direction of a physician" be removed from the rule.

Response:

HHSC acknowledges the comment received from the Coalition for Nurses in Advanced Practice. The recommendation has been reviewed and considered but was not incorporated into the rule because the rule is consistent with current contract language. No change was made to the rules in response to this recommendation.

Comment:

HHSC received several comments concerning the rule §353.202(8), Member Bill of Rights, from the Office of Inspector General (OIG) requesting that HHSC revise the Medicaid Managed Care proposed rules. OIG recommended that §353.202(8), Member Bill of Rights, include a statement encouraging clients to report a client (a person who receives benefits) or provider (e.g., doctor dentist, counselor, etc.) suspected of committing waste, abuse or fraud, to his or her HMO and the Office of Inspector General.

Response:

HHSC acknowledges the comments received from the Office of Inspector General. The Commission considered this comment. In an effort to align the Medicaid managed care and fee-for-service programs, HHSC will address the recommendation from OIG as it applies to all Medicaid recipients at a later date. No change was made to the rules in response to this recommendation.

Comment:

HHSC received a comment from the Office of Inspector General (OIG) concerning rule §353.203, Member Bill of Responsibility. OIG suggested revising the rule to include language regarding working with the agency and providers to ensure appropriate medical care is received and clarifies reporting requirements for Medicaid clients.

Response:

HHSC acknowledges the comments received from the Office of Inspector General. The Commission considered this comment. In an effort to align the Medicaid managed care and fee-for-service programs, HHSC will address the recommendation from OIG as it applies to all Medicaid recipients at another time. No change was made to the rules in response to these recommendations.

Comment:

HHSC received a comment concerning rule §353.2(1)(C), Definitions, from the Texas Association for Home Care (TAHC) requesting that HHSC revise the definition for the term "Action." Currently "Action" is defined as failure to provide services in a timely manner or the failure of an HMO to act within the timeframes set forth by the Commission and state and federal law. TAHC request that HHSC delete the term "Action" and use the term "Violation." TAHC suggested that the term "Violation" be defined as, "Failure to provide services in a timely manner and failure of an HMO to act within the timeframes set forth by the commission and state and federal law."

Response:

HHSC acknowledges the comment received from TAHC. The rule, as written, is a federal requirement found at 42 CFR 438.400. No change was made to the rule in response to the recommendation.

Comment:

HHSC received a comment concerning rule §353.2(42)(B), Definitions, from the Texas Association for Home Care (TAHC) requesting that HHSC revise the definition for "Medically necessary health services". Currently, "Medically necessary health services" is defined as "(B) provided at appropriate facilities and at the appropriate levels of care for the treatment of the member's medical conditions;"

Response:

HHSC acknowledges the comment received from TAHC. Rule §353.2(42)(E), Definitions, contains the same language addressing the concerns submitted by TAHC. No change was made to the rule in response to the comment.

Comment:

HHSC received a comment concerning rule §353.413(a), Managed Care Benefits and Services for Children Under 21 Years of Age, from the Texas Association for Home Care (TAHC) requesting that HHSC revise the rule. The previous language concerning the actual discretionary authority of the HHSC regarding EPSDT services cited 42 United States Code §1396d(r) and the Texas Health Steps Program (THSteps) found at Chapter 33 of this title (relating to Early and Periodic Screening, Diagnosis and Treatment) as the authority. The amended rule §353.413(a), Managed Care Benefits and Services for Children Under 21 Years of Age, currently states "...as determined by the Commission" as it pertains to discretionary authority regarding Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) services.

Response:

HHSC acknowledges TAHC's comment concerning rule §353.413(a), Managed Care Benefits and Services for Children under 21 Years of Age. The Commission prefers that the rule does not include specific citations listed in the rule because the reference may change, which would require a rule change to update the citation. No change was made to the rule in response to the recommendation.

Comment:

HHSC received a comment concerning rule §353.415(a), Member Complaint Procedures, from the Texas Association for Home Care (TAHC) requesting that HHSC revise the rule. TAHC states that this section only addresses "member" complaints. Under rule §353.415(12), Definitions, providers are included in the definition of a "complainant", however are given no formal mechanism to lodge a complaint.

Response:

HHSC acknowledges TAHC's comment concerning rule §353.415(a), Member Complaint Procedures. Requirements for the HMOs to accept, track and process provider complaints are outlined in the HMO contracts. The definitions for "complainant" found in §353.415(12), Definitions, is contract language. No change to the rule was made in response to the comment.

Comment:

One commenter suggested that, for Early and Periodic Screening, Diagnostic and Treatment (EPSDT) recipients, HHSC should revise the definitions of "medically necessary behavioral health services" and "medically necessary health services" in proposed §353.2 to reflect the language of the Social Security Act: "necessary health care, diagnostic services, treatment, and other measures described elsewhere in the Act) to correct or ameliorate defects and physical and mental illnesses and conditions."

Response:

HHSC recognizes the commenter's concerns. However, HHSC believes that the proposed definitions not only accommodate the Social Security Act requirements for EPSDT recipients but also incorporate additional requirements and standards that the Medicaid managed care organizations are contractually bound by. The proposed language has been retained to align the administrative rules with the contract requirements and to preclude any confusion that would likely arise if the contract requirements and rule requirements were dissimilar. No change was made to the rules in response to this recommendation.

Comment:

One commenter contended that §353.104, Member Education Program, is contrary to a term of a litigation-related consent decree because it does not allow Medicaid managed care enrollees (Members) to bypass a Medicaid managed care organization's internal complaint systems and "go straight to the Medicaid fair hearing process," as permitted by §531.0211, Government Code (formerly, Section 16, Article 4413 (502), Revised Statutes, added by SB601, 74th Leg., R.S., 1995).

Response:

HHSC acknowledges the comment but disagrees that the amended rule precludes a Member from directly accessing the Medicaid fair hearing process. Indeed, the rule specifically requires that the Medicaid health maintenance organizations (MHMO) include in its Member education materials information on the Member's right to request a fair hearing and the process for requesting one. The rule does not impose a contingent requirement that the recipient first access the MHMO's internal complaint procedure.

In addition, §353.415(c) requires that an MHMO's internal complaint procedure "contain prominent notice" that the recipient "retains all rights ... to a fair hearing through the Commission, in addition to the health maintenance organization's complaint process." HHSC notes that §531.0211, Government Code, requires that the MHMOs tell Members of their "right to bypass the managed care organization's internal complaint system and use the notice and appeal procedures otherwise required by the Medicaid program." Section 531.0211 does not in any way change the Medicaid notice and appeal "the fair hearing" process. It merely permits use of the fair hearing process, without resort to an MHMO's internal process, pursuant to the fair hearing system's rules. Under the fair hearing system rules, a Member may access the fair hearing process only if the underlying complaint meets the threshold requirements of the fair hearing process, which are spelled out in 1 T.A.C. §357.1(a), relating to the purpose and scope of the Medicaid fair hearing process. One of the threshold requirements is that there have been an adverse "action" taken by HHSC or an agency that operates any portion of the Medicaid program. If the Member's complaint meets the fair hearing threshold requirements, the Member may "go straight to the Medicaid fair hearing process." If the complaint does not meet a fair hearing threshold requirement, the Member must resolve the issue with the MHMO. Chapter 353 defines a "complaint" to mean "[a] any dissatisfaction" expressed by a Complainant to the MCO other than an "action," which provides for the Member to access the fair hearing process. A "complaint" may or may not constitute an "action." No change was made to the rules in response to this recommendation.

Comment:

One commenter expressed concern that sections 353.105, Provider Education Program, and 353.411(i), Accessibility of Services, are contrary to paragraph 194 of a litigation-related consent decree, which requires training for all health care providers and their staff about the relevant provisions of the consent decree.

Response:

HHSC disagrees that either §353.105 or §353.411(i) violates paragraph 194 of the consent decree. Paragraph 194 requires only that providers be trained on, among other topics, the relevant provisions of the consent decree. Paragraph 194 does not require that its own terms be incorporated into an administrative rule. The topics to be covered in provider training identified in §353.105 and §353.411(i) are not exhaustive. No change was made to the rules in response to this recommendation.

Comment:

One commenter expressed concern that the travel distance limits in proposed rule §353.411, Accessibility of Services - 30 miles to see a primary care provider and 75 miles to see a specialist - are too long for most areas in the state. The commenter suggests that HHSC reduce the 30- and 75-mile limits for most areas of the state and establish separate travel standards only for "extremely rural or frontiers areas" of the state, either through separate regulations or through the exceptions process already established by §353.411(c) and (g).

Response:

The Commission disagrees with the comment and believes it is unrealistic to reduce the travel distance limits to less that 30 miles for primary care providers and 75 miles for specialist, given the scarcity of both types of providers in much of the state. In 2004 80 percent of licensed medical specialists were concentrated in 20 metropolitan counties. During the same period there were 120 counties in which there were no medical specialists at all. For example, there are 41 pediatric neurologists in the state of Texas, all of them located in 13 counties. All of the child psychiatrists in the state are located in 33 counties. Again, in 2004, 64 percent of all pediatric dentists in Texas were located in only six counties. In addition, the 30- and 75-mile travel limits are identical to those that commercial health plans are required by the Texas Department of Insurance to meet 28 T.A.C. §11.1607. No change was made to the rules in response to this recommendation.

Comment:

One commenter expressed concern that proposed §353.417, Quality Assessment and Performance Improvement, would be contrary to paragraph 197 of a litigation-related consent decree. The commenter stated that the proposed rule eliminates required studies of the timeliness of care provided by the managed care organizations, as required by current §353.417(a)(7) and (8).

Response:

The Commission disagrees that revised §353.417 is in any way inconsistent with paragraph 197. The comment suggests that both paragraph 197 and current §353.417(a)(7) and (8) require studies of the timeliness of care. The Commission disagrees. Under paragraph 197, the Commission must assure, by various means that managed care organizations have a sufficient network of providers to provide timely care to members. Paragraph 197 does not require timeliness studies. Nor does paragraph 197 require that the obligation that the managed care organizations have a sufficient network of providers be imposed in an administrative rule as opposed to, for example, by contract. In addition, current §353.417(a)(7) and (8) do not require timeliness studies. But §353.417(a)(7) and (8) currently do require that a managed care organization's own quality improvement program contain performance standards for accessibility to care and time standards within which managed care network providers must respond to the medically necessary health needs of their members. No change was made to the rules in response to this recommendation.

Comment:

One commenter expressed concern that §353.417(d) is inconsistent with paragraph 199 of a litigation-related consent decree. The commenter believes that the revised rule gives HHSC the discretion to decide whether or not to evaluate access to care and quality of care instead of mandating review.

Response:

HHSC disagrees that proposed §353.417(d) is inconsistent with paragraph 199. The only proposed change to subsection (d) is to change the current reference from "MCOs" to "HMOs." This proposed change does not affect the Commission's decision to evaluate access to or quality of care provided by the Medicaid HMOs. The change to health maintenance organization (HMO) was made to conform to the revised definitions in §353.2. No other revisions to subsection (d) were proposed. The Commission cannot consider comments to provisions within a rule to which revisions were not proposed and, therefore, no notice given to the public that changes were being considered. Nonetheless, the Commission notes that subsection (d) continues to mandate independent evaluations of each HMO's quality of services, member access, and quality of care. No change was made to the rules in response to this recommendation.

Comment:

One commenter objected to the proposed change in §353.413(a), Managed Care Benefits and Services for Children Under 21 Years of Age, stating that the rule appears to change the source of EPSDT requirements from federal law to the Commission. The commenter goes on to add that the Commission cannot reduce or change the scope of benefits that are guaranteed to class members by federal law.

Response:

HHSC acknowledges the comment and the concern expressed. However, the proposed revision does not reduce or change the scope of benefits that are guaranteed to EPSDT recipients. The revised language serves only to clarify that it is HHSC's obligation, rather than that of the participating health maintenance organizations, to determine what level and frequency of care meet the federal EPSDT requirements and to reflect HHSC's obligation, under 42 CFR §440.230(d), to determine what constitutes medically necessary care. No change was made to the rules in response to this recommendation.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§353.1 - 353.3

The amendments are adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2005.

TRD-200502967

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER B. PROVIDER AND MEMBER EDUCATION PROGRAMS

1 TAC §§353.101, 353.102, 353.104, 353.105

The amendments are adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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1 TAC §353.103

The repeal is adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER C. MEMBER BILL OF RIGHTS AND RESPONSIBILITIES

1 TAC §§353.201 - 353.203

The amendments are adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §353.204

The repeal is adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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SUBCHAPTER D. TELEPHONE-BASED HEALTH CARE SYSTEMS PILOT PROGRAM

1 TAC §§353.301 - 353.304

The repeals are adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. STANDARDS FOR THE STATE OF TEXAS ACCESS REFORM (STAR)

1 TAC §353.401, §353.402

The repeals are adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §§353.403, 353.405, 353.407, 353.409, 353.411, 353.413, 353.415, 353.417, 353.419

The amendments are adopted under the Texas Government Code, §531.033, which provides the executive commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§353.419. Financial Standards.

(a) Health maintenance organizations (HMOs) must meet solvency standards established by the Texas Department of Insurance at 28 TAC Chapter 11, Subchapter S, and by the Commission in its competitive procurement proposals.

(b) The Commission may share in the experience rebates in accordance with §353.3, Experience Rebate in Managed Care Organization.

(c) The Commission may establish incentive payment programs to encourage HMOs to meet or exceed the goals and objectives of the Medicaid Managed Care Program established by the Commission through its contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 2. LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

The Texas Department of Agriculture (the department) adopts amendments to §2.1 and §2.4, concerning licensing by the department, and the repeal of §2.2, concerning an expiration date for Chapter 2, without changes to the proposal published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3188).

The amendment to §2.1(a) is adopted to correct a typographical error in the spelling of "statute." The amendments to §2.1(d) are adopted to update statutory citations for sections previously found in the Texas Civil Statutes, that are now found in the Texas Occupations Code. The amendment to §2.4(a) is adopted to make the section consistent with the current agency practice of requiring that licensees notify the department in writing of any change of address. The repeal of §2.2 is adopted to eliminate an unnecessary section. The Texas Government Code, §2001.039 now provides for a review, revision or readoption of agency rules, making this section unnecessary.

No comments were received on the proposal.

4 TAC §2.1, §2.4

The amendments to §2.1 and §2.4 are adopted under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2005.

TRD-200502976
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 10, 2005
Proposal publication date: June 3, 2005
For further information, please call: (512) 463-4075

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4 TAC §2.2

The repeal of §2.2 is adopted under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2005.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 10, 2005
Proposal publication date: June 3, 2005
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER C. QUALITY OF SERVICE

16 TAC §26.54

The Public Utility Commission of Texas (commission) adopts an amendment to §26.54, specifically §26.54(c)(6)(A) relating to the Trouble Report rate and §26.54(c)(2) relating to Business Office, Repair Service and Operator Handled Call Performance Benchmark with changes to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 993).

The amendment is intended to alter performance benchmarks for dominant carriers in order to have a meaningful and attainable standard in changing telecommunications market conditions. This amendment is adopted under Project Number 29897.

The commission received initial comments on the proposed amendment from Southwestern Bell Telephone, L.P., doing business as SBC Texas (SBC Texas), Verizon Southwest (Verizon), and Texas Telephone Association (TTA). Additionally, the commission received reply comments on the proposed amendment from the United States Department of Defense and All Other Federal Executive Agencies (DOD/FEA).

Specific Subsections of the Rule

Subsection (c)(2)(A)

SBC Texas stated that it supports the proposed modifications regarding the benchmark for corrective action for toll and operator assistance speed-of-answer compliance. However, SBC Texas asked the commission to clarify that a provider may select either of the two proposed methods of measuring its compliance. SBC Texas commented that if its understanding is correct, then the modified rule would help lessen administrative expenses associated with measuring service quality by reducing the measurement efforts that would otherwise be required in the event both information sets had to be recorded.

Verizon commented that any retention of any service performance for toll and assistance operator calls or operator assistance (OA) is unnecessary. Verizon opined that customer satisfaction plays a large role in the market and service quality requirements with regard to answer time are not necessary in today's environment. Verizon pointed out that other states have agreed that speed of answer requirements for operator-handled calls are no longer necessary in today's competitive environment. However, if the commission decides to retain the answer time requirements for OA, then Verizon proposed that the benchmark should be revised to a monthly average speed answer (ASA) standard of 20 seconds. Verizon opined that the adoption of an ASA standard is more appropriate because it is more representative of the customer experience (*i.e.*, it includes the time that all customers wait to be answered). Further, the 20 second answer time interval is reasonable given that this interval is representative of a normal telephone ringing cycle of three to four rings.

DOD/FEA opined that the proposed modification to change the criteria for corrective action from a "period of four days in any month" to a "monthly average basis" will give dominant certified telecommunications utilities (DCTUs) a little more flexibility, but still maintain reasonable levels for consumers. DOD/FEA disagreed with SBC Texas that the proposed modifications would allow a company to select between two standards rather than applying both. Furthermore, pending further study, the DOD/FEA opined that allowing the DCTU to select between the two standards for calls to toll or assistance operator calls provides too much latitude at the expense of consumers.

Commission response

The commission's intent is to allow providers to select either of the two proposed methods for measuring its compliance. The commission agrees with SBC Texas that the modifications made to the rule should help lessen administrative expenses associated with measuring service quality by reducing the measurement efforts that would otherwise be required in the event both information sets had to be recorded. Furthermore, the commission finds that there is no empirical evidence to support DOD/FEA's claim that allowing the DCTU to select between the two standards for calls to toll or assistance operators provides too much latitude at the expense of consumers. Therefore, the commission revises this subsection to reflect that, for operator-handled calls, providers may choose to either use a benchmark of 85% of calls answered within ten seconds or that the average answer time shall not exceed 3.3 seconds.

Subsection (c)(2)(B)

SBC Texas opined that the proposed elimination of compliance thresholds for calls to the business office, and other calls are appropriate. These proposed changes reflect compliance, competitive and marketplace realities, as well as consumer expectations. Furthermore, the proposed changes move toward parity application among other regulated industries and among similarly situated competitors of DCTUs.

Verizon applauded the commission's proposal to eliminate the service objective requirement for calls to the business office. However, Verizon opined that the service objective for calls to the

repair office could also be eliminated because competitive market forces would ensure that customers would continue to receive the same level of service. However, if the commission decided to retain a requirement applicable to Repair Service Calls, then the requirement should be revised to reflect a monthly ASA of 60 seconds. Verizon asserted that an ASA of 60 seconds is more representative of the customer experience because it includes the time that all customers wait to be answered. Additionally, Verizon proposed that the rule language should be revised to eliminate the language "for a period of five days within" from the benchmark for corrective action.

DOD/FEA contended that calls to the business offices, other than for repairs (if they can be identified), should be removed from the test as proposed by staff. DOD/FEA suggested that the proposed changes provide the DCTU with more flexibility and calls to the business office for other than repair are almost always of lesser time value. Furthermore, the DOD/FEA asserted that uniform procedures that provide independent means for consumers to predict service levels and evaluate carrier's service claims can be particularly important with more competition.

Commission response

The commission finds that at this time it is inappropriate to eliminate or modify the service objectives for calls to the repair office. Verizon's proposal of revising the service objective for repair calls would be burdensome because other carriers would have to modify their systems to monitor the new standard. Furthermore, based on the comments filed by the DOD/FEA, federal agencies and other large telecommunications users still value and utilize service quality data in the procurement of telecommunications services in a competitive environment.

Subsection (c)(2)(C)

Verizon contended that service performance benchmarks for calls to directory assistance (DA) should be eliminated in favor of allowing the market to provide the necessary level of service quality. Verizon also commented that if the commission declines to eliminate the DA service quality measure, then the benchmark should be revised to require a monthly ASA of 20 seconds. Furthermore, Verizon asserted that correction action reports for operator-handled calls provide no benefit to the Texas consumer and imposes unreasonable and unnecessary administrative burden on DCTUs.

SBC Texas opined that the proposed changes reflect compliance, competitive and marketplace realities, as well as consumer expectations. Furthermore, the proposed changes move toward parity application among other regulated industries and among similarly situated competitors of DCTUs.

The DOD/FEA asserted that uniform procedures that provide independent means for consumers to predict service levels and evaluate carrier's service claims can be particularly important with more competition.

Commission response

The commission finds that at this time it is inappropriate to eliminate or modify the service objectives for directory assistance calls. Verizon's proposal of revising the service objective for directory assistance calls would be burdensome because other carriers would have to modify their systems to monitor the new standard. Furthermore, based on the comments filed by the DOD/FEA, federal agencies and other large telecommunications users still value and utilize service quality data in the procurement of telecommunications services in a competitive environment.

Subsection (c)(6)(A)

SBC Texas commented that the proposed modifications are reasonable in that they establish thresholds at more achievable levels that take into account the size of the exchange in questions. Larger exchanges (which the rule would define as those with 100,000 or more lines would be subject to a compliance threshold of three trouble reports, while smaller exchanges (less than 10,000 lines) would be subject to a threshold of six trouble reports.

TTA commented that it appreciated that the proposed performance benchmark applicable for corrective actions has a sliding scale as a function of exchange size. However, TTA remains concerned that a company wide benchmark of three customer trouble reports per 100 access lines may still provide for an impossible standard to meet for companies that only serve one or two exchanges. TTA opined that the company-wide average should be bifurcated to allow companies with fewer than 100,000 access lines to use a benchmark of six trouble reports per 100 access lines on a company wide basis.

Verizon commented that the published rule should be revised to impose a single statewide service quality standard of 6.0%, or no more than six trouble reports per 100 access lines. Verizon asserted that the published rule inappropriately imposes both company-wide and exchange specific standards that are inconsistent with one another.

DOD/FEA urged the commission to adopt the proposed changes. DOD/FEA opined that this gives the DCTU more flexibility without significantly affecting expected service levels for nearly all customers. DOD/FEA also commented that it does not object to TTA's proposal because it still provides a moderately tough standard for small companies in rural areas.

Commission response

The commission acknowledges that companies serving a total of 10,000 access lines or less would be subject to company-wide and exchange specific standards that are inconsistent with one another. Therefore, in order to provide consistency between the company-wide and exchange specific benchmarks for smaller exchanges, the commission revises the rule to bifurcate the company-wide average to allow companies that serve a total of 10,000 or less access lines to use a benchmark of six trouble reports per 100 access lines.

General Comments

SBC Texas, Verizon, TTA, and DOD/FEA generally support the commission's proposed revisions to the service objectives and performance benchmarks. However, Verizon and TTA suggested that although these revisions represent an excellent beginning point for revising the current service quality rules, competition, not regulation, should ultimately dictate service quality. Verizon asserted that its continuing commitment to provide quality services to its customers and consumers having the ability to choose from multiple providers when selecting a provider for telecommunications services eliminates the need for regulatory monitoring of service quality. Therefore, Verizon proposed that most, if not all, of the existing service objectives and performance benchmarks be eliminated from the proposed rule.

In contrast, the DOD/FEA urged the commission to reject Verizon's request to eliminate nearly all objectives and benchmarks. DOD/FEA opined that it is not clear that competition in Texas has yet replaced the need to monitor telecommunications service quality. Furthermore, data regarding service quality is important for consumers to make informed choices among alternative suppliers. Federal agencies and other large telecommunications users, while experienced in procuring telecommunications services in a competitive environment, still value service quality information. The DOD/FEA suggested that in the near future, the commission should conduct a comprehensive review of service objectives and performance benchmarks for all local exchange carriers (LECs) in Texas.

Commission response

The commission acknowledges all of the comments filed by the parties and will continue to evaluate the need to conduct a comprehensive review of service objectives and performance benchmarks for all LECs in Texas.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 55.001, 55.002, 55.003.

§26.54. Service Objectives and Performance Benchmarks.

(a) This section establishes service objectives that should be provided by a dominant certificated telecommunications utility (DCTU), as applicable. The section outlines performance benchmark levels for each exchange. If service quality falls below the applicable performance benchmark for an exchange, that indicates a need for the utility to investigate, take appropriate corrective action, and provide a report of such activities to the commission. The objective service levels are based on monthly averages, except for dial service and transmission requirements, which are based on specific samples. DCTUs shall make measurements to determine the level of service quality for each item included in this section. Each DCTU shall provide the commission with the measurements and summaries for any of the items included herein on request of the commission. Records of these measurements and summaries shall be retained by the DCTU as specified by the commission.

(b) One-party line service and voice band data.

(1) One-party line service will be made available to all subscribers of local exchange service upon request.

(2) All open wire transmission media shall be replaced with more reliable and better quality transmission media by the end of 1998, unless otherwise exempted by the commission. Any utility that obtained an exemption from this requirement shall file a report with the commission on the status of its open wire replacement program by June 1, 2000, and if all open wire replacement is not complete by that date, every three months thereafter until the replacement program is complete.

(3) All switched voice circuits shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent), by the end of 2002. This upgrade will be made at no charge to the individual customer.

(4) Within 180 days of the effective date of this section, a DCTU may request a waiver from the requirements of paragraph (3) of this subsection. The waiver request may be granted only if the commission determines that all of the following requirements have been met.

(A) The cost to the DCTU of implementing the provisions of paragraph (3) of this subsection exceeds the public benefit.

(B) The DCTU has submitted by June 30, 2000, a reasonable implementation plan stating for each exchange when all switched voice circuits within that exchange shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent).

(C) The DCTU has submitted proposed tariff sheets which provide that:

(i) upon request by a customer, the DCTU will upgrade the customer's switched voice circuits to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent);

(ii) the upgrade will be made at no charge to the individual customer; and

(iii) the upgrade request will be completed within the time period allowed for a service order for regular service installation pursuant to subsection (c)(1)(B) of this section.

(D) The DCTU has agreed to provide an on-going customer education program, acceptable to the commission, which assures that the DCTU's customers are aware of the availability of the service quality upgrade.

(c) The DCTU shall comply with the service quality objectives established below in providing the basic telecommunications service to its end-use customers. The DCTU shall file its service quality performance report on a quarterly basis. The report shall include its monthly performance for each category of performance objective and a summary of its corrective action plan for each exchange in which the performance falls below the benchmark. Additionally, the corrective action plan shall include, at a minimum, details outlining how the needed improvements will be implemented within three months and result in performance at or above the applicable benchmark.

(1) Installation of service. Unless otherwise provided by the commission:

(A) Ninety-five percent of the DCTU's service orders for installing primary service shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer. Performance Benchmark Applicable for Corrective Action: If the performance is below 95% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchanges or wirecenters.

(B) Ninety percent of the DCTU's service orders for regular service installations shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer. This includes orders for primary and other services, installations, moves, or changes, but not complex services. Performance Benchmark for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive

months the DCTU shall provide a detailed corrective action plan for such exchanges or wirecenters.

(C) Ninety-nine percent of the DCTU's service orders for service installations shall be completed within 30 days. Performance Benchmark for Corrective Action: If the performance is below 99% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(D) One-hundred percent of the DCTU's service orders for service installations shall be completed within 90 days.

(E) Each DCTU shall establish and maintain installation time commitment guidelines for the various complex services contained in its tariff. Those guidelines should be available for public review and should be applied in a nondiscriminatory manner.

(F) The installation interval measurements outlined in subparagraphs (A) - (D) and (H) of this paragraph shall commence with either the date of application or the date on which the applicant qualifies for service, whichever is later.

(G) The DCTU shall provide to the customer a due date on which the requested installation or change shall be made. If a customer requests that the work be done on a regular working day later than that offered by the DCTU, then the customer's requested date shall be the commitment date. If a premises visit is required, the DCTU shall schedule an appointment period with the customer for morning or afternoon, not to exceed a four-hour time period, on the due date. If the DCTU is unable to keep the appointment, the DCTU shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU carrier representative shall leave a notice at the premises advising the customer how to reschedule the work.

(H) Ninety percent of the DCTU's commitments to customers for the date of installation of service orders shall be met, excepting customer-caused delays. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU shall submit a list of missed commitments to the commission and provide a detailed corrective action plan for such exchange or wirecenter.

(I) The installation interval and commitment requirements of subparagraphs (A) - (D) and (H) of this paragraph do not include service orders either to disconnect service or to make only record changes on a customer's account.

(J) A held regrade order is one not filled within 30 days after the customer has made application for a different grade of service except where the customer requests a later date. In the event of the DCTU's inability to so fill such an order, the customer should be advised and told when the DCTU can fulfill the order. The number of held regrade orders shall not exceed 1.0% of the total number of customer access lines served.

(2) Operator-handled calls. DCTUs shall maintain adequate personnel to provide an average operator answering performance as follows for each exchange on a monthly basis:

(A) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time shall not exceed 3.3 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average exceeds 3.3 seconds at any answering location in any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(B) Ninety percent of repair service calls shall be answered within 20 seconds or average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is below 90% within 20 seconds or the average answer time exceeds 5.9 seconds at any answering location for a period of five days within any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(C) Eighty-five percent of directory assistance calls shall be answered within ten seconds or the average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average answer time exceeds 5.9 seconds at any answering location in any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(D) An "answer" shall mean that the operator, interactive voice system, or representative, is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an "answer."

(E) DCTUs may measure answer time on a toll center or operating unit basis in lieu of measuring answer time in each exchange unless specifically requested by the commission.

(3) Local dial service. Sufficient central office capacity and equipment shall be provided to meet the following requirements:

(A) dial tone within three seconds on 98% of calls. For record-keeping and reporting purposes, 96% in three seconds during average busy season and/or busy hour shall be acceptable as complying with this requirement;

(B) completion of 98% of intraoffice calls (those calls originating and terminating within the same central office building) without encountering an equipment busy condition (blockage) or equipment failure;

(C) for every switch that serves customers, the availability factor for stored program controlled digital and analog switching facilities shall be 99.99%, or the total unscheduled outage for each switch shall not exceed 53 minutes per year.

(D) A report detailing the cause and proposed corrective action for the local dial service measures, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(4) Local interoffice dial service.

(A) Each DCTU shall provide and maintain interoffice trunks on its portion of the local exchange service network so that 97% of the interoffice local calls excluding calls between central offices in the same building are completed without encountering equipment busy conditions or equipment failures. For DCTUs' testing, record-keeping, and reporting purposes, DCTUs are not required to separate local dial service results from local interoffice dial service results unless specifically requested by the commission.

(B) The availability factor for stored program controlled digital and analog switching and interoffice transmission facilities for end-to-end transmission shall be 99.93%, or the total unscheduled outage shall not exceed 365 minutes per year.

(C) A report detailing the cause and proposed corrective action for the local dial service measures, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(5) Direct distance dial service. Engineering and maintenance of the trunk and related switching components in the toll network shall permit 97% completion on properly dialed calls, without encountering failure because of blockages or equipment irregularities. A report detailing the cause and proposed corrective action for the direct distance dial service measure, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(6) Customer trouble reports.

(A) The DCTU that serves more than 10,000 access lines shall maintain its network service in a manner that it receives no more than three customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month (on average). Performance Benchmark Applicable for Corrective Action: If the customer trouble report exceeds 3.0% (three per 100 access lines) for a large exchange or 6.0% (six per 100 access lines) for a smaller exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter. For purposes of this section, a large exchange is defined as serving 10,000 or more access lines and a small exchange is defined as serving less than 10,000 access lines.

(B) The DCTU that serves 10,000 or less access lines shall maintain its network service in a manner that it receives no more than six customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month (on average). Performance Benchmark Applicable for Corrective Action. If the customer trouble report exceeds 6.0% (six per 100 access lines) per exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(C) The DCTU shall provide to the customer a commitment time by which the trouble will be cleared. If a premises visit is required, the DCTU shall schedule an appointment period with the customer for the morning or afternoon, not to exceed a four-hour time period. When the DCTU cannot keep an appointment, the DCTU shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU representative shall leave a notice at the premises advising the customer how to reschedule the work.

(D) At least 90% of out-of-service trouble reports on service provided by a DCTU shall be cleared within eight working hours, except where access to the customer's premises is required but not available or where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(E) Each DCTU shall establish procedures to insure the prompt investigation and correction of trouble reports so that the percentage of repeated trouble reports on residence and single line business lines does not exceed 22% of the total customer trouble reports on those lines. Performance Benchmark Applicable for Corrective Action: If repeat reports exceed 22% of the total customer trouble report in any exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(7) Transmission requirements. All voice-grade trunk facilities shall conform to accepted transmission design factors and shall be maintained to meet the following objectives when measured from line terminals of the originating central office to the line terminals of the terminating central office. A periodic report for central offices or exchanges as requested by the commission staff shall be provided by the DCTU, in order to demonstrate compliance with the following objectives.

(A) Interoffice local exchange service calls. Excluding calls between central offices in the same building, 95% of the measurements on the network of a DCTU should have from two to ten decibels loss at 1000+20 hertz and no more than 30 decibels above reference noise level ("C" message weighting).

(B) Direct distance dialing. Ninety-five percent of the transmission measurements should have from three to 12 decibels loss at 1000+20 hertz and no more than 33 decibels above reference noise level ("C" message weighting).

(C) Subscriber lines. All newly constructed and rebuilt subscriber lines shall be designed for a transmission loss of no more than eight decibels from the serving central office to the customer premises network interface. All subscriber lines shall be maintained so that transmission loss does not exceed ten decibels. Subscriber lines shall in addition be constructed and maintained so that metallic noise does not exceed 30 decibels above reference noise level ("C" message weighting) on 90% of the lines. Metallic noise shall not exceed 35 decibels above reference noise level ("C" message weighting) on any subscriber line.

(D) PBX, key, and multiline trunk circuits. PBX, key, and multiline trunk circuits shall be designed and maintained so that transmission loss at the subscriber station does not exceed eight decibels. If the PBX or other terminating equipment is customer-owned and if transmission loss exceeds eight decibels the DCTU's responsibility shall be limited to providing a trunk circuit with no more than five decibels loss from the central office to the point of connection with customer facilities.

(E) Impulse Noise Limits. The requirements for impulse noise limits shall be as follows:

(i) For switching offices, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of test calls. The reference noise level threshold shall be less than: 54 dBrnC for Crossbar switch, 59 dBrnC for step-by-step switch, and 47 dBrnC for electronic or digital switch.

(ii) For trunks, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of trunks in a group. The reference noise level threshold shall be less than 54 dBrnCO for voice frequency trunks, and 62 dBrnCO for digital trunks.

(iii) For loop facilities, the noise level count shall not exceed 15 pulses above the threshold in any continuous 15 minute period on any loop. The reference noise level threshold shall be less than 59 dBrnC when measured at central office (CO), or referred to CO through 1004 Hz loss.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503031

Adriana A. Gonzales
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Public Utility Commission of Texas
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Proposal publication date: February 25, 2005
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZELWOOD ACT)

19 TAC §§21.2099 - 21.2108

The Texas Higher Education Coordinating Board adopts new §§21.2099 - 21.2108, concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act) without changes to the proposed text as published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3192).

Specifically, Senate Bill 101, 79th Legislature, Regular Session, amended §54.203 of the Texas Education Code, and gives the Coordinating Board rule-making authority for the state's exemption program for Veterans and their Dependents (commonly referred to as the Hazlewood Act). Through this program, eligible Texas veterans and dependent children of deceased Texas veterans are provided free tuition and reduced fees for up to 150 credit hours while attending public institutions of higher education. The bill also added new §61.0516 of the Texas Education Code, which assigns the Board the responsibility of creating and maintaining a state-wide database to track the veterans' and their children's use of their 150 hours of eligibility. The new sections reflect the basic requirements of the program and procedures for making awards and for meeting reporting requirements.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §54.203, which states that the Coordinating Board is authorized to adopt rules to provide for the efficient and uniform application of this section; and new §61.0516, which requires the Board to develop a system to electronically monitor the use of tuition exemption under §54.203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503014
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: June 3, 2005
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.35

The State Board of Education (SBOE) adopts an amendment to §33.35, concerning the Texas Permanent School Fund (PSF) guidelines for the custodian and securities lending agent. The amendment is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2965) and will not be republished. The section establishes the guidelines for the investment of cash collateral by the securities lending agent. The adopted amendment updates the guidelines for cash collateral investment in line with current market practices and standards.

The Texas Education Code, §7.102(c)(31), states that the SBOE may invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and TEC, Chapter 43. The rules in 19 TAC Chapter 33 establish investment objectives, policies, and guidelines for the PSF. Section 33.35 includes the guidelines for the investment of cash collateral by the securities lending agent.

The adopted amendment to 19 TAC §33.35 modifies criteria for permissible investments by changing maximum one-year maturity to 397-day maturity, adding asset backed commercial paper and securities, and specifying the requirement of ratings by Moody's Investor Service and Standard and Poor's Corporation for reverse repurchase agreements and foreign sovereign debt. The adopted amendment also modifies investment parameters by clarifying the definition of "Tier 1" credit quality and removing the prohibition of asset backed securities.

In accordance with Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than September 1, 2005, in order for the updated guidelines to be implemented in a timely manner, as necessary for effective investment management. The effective date of the adopted amendment is 20 days after filing as adopted.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §7.102(c)(31), which authorizes the State Board of Education to invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and the Texas Constitution, Article VII, §5(d).

The amendment implements the Texas Education Code, §7.102(c)(31), and the Texas Constitution, Article VII, §5(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503032

Cristina De La Fuente-Valadez
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Texas Education Agency
Effective date: August 14, 2005
Proposal publication date: May 20, 2005
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CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §111.21

The State Board of Education (SBOE) adopts an amendment to §111.21, concerning the Texas Essential Knowledge and Skills (TEKS) for middle school mathematics. The amendment is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2968) and will not be republished. The section establishes the implementation of middle school mathematics, Grades 6-8. The adopted amendment establishes in rule an implementation date of the 2006-2007 school year for the refined and aligned middle school mathematics TEKS. A corresponding amendment to §111.31 relating to implementation of high school mathematics TEKS is also adopted in this issue.

The SBOE recently concluded the review process for the secondary mathematics TEKS in the areas of mathematics, Grades 6-8 (including Grade 6 Spanish mathematics); Algebra I and II; Geometry; Precalculus; and Mathematical Models with Applications. The review process included review of the TEKS by a work group of teachers, central office staff, and university personnel. After the work group refined and aligned the secondary mathematics TEKS, the draft revisions were placed on the Texas Education Agency (TEA) web site in the form of a survey to collect feedback from the public beginning in mid-May 2004. A summary of the survey results was provided to the SBOE at the July 2004 meeting.

The draft revisions were also provided to a review panel consisting of three highly regarded mathematics experts. At the September 2004 meeting, the SBOE was presented with a description of the expert reviewers' comments on the alignment and refinement of the TEKS. The SBOE approved the proposed amendments to 19 TAC Chapter 111, Subchapters B and C, for first reading and filing authorization at the November 2004 meeting. Subsequent to the November meeting, the TEA staff placed a second survey on the TEA website to collect feedback regarding implementation. The survey results, which consisted primarily of responses from teachers and other school district personnel, were shared with the SBOE during the February 2005 meeting. Results indicated a preference for a fall 2006 implementation date rather than implementation beginning in the 2005-2006 school year.

During the February 2005 meeting, the SBOE adopted amendments that refine and align the TEKS for secondary mathematics and specified that implementation begin with the 2006-2007 school year. Accordingly, language to amend applicable sections to reflect this implementation date is adopted.

The adopted amendment to 19 TAC Chapter 111, Subchapter B, §111.21, establishes in rule an implementation date of the 2006-2007 school year for the refined and aligned secondary mathematics TEKS, as adopted by the SBOE in February 2005. The amendment is adopted to be effective August 1, 2006, for implementation with the 2006-2007 school year.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendment implements the Texas Education Code, §§7.102, 28.002, and 28.025.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §111.31

The State Board of Education (SBOE) adopts an amendment to §111.31, concerning the Texas Essential Knowledge and Skills (TEKS) for high school mathematics. The amendment is adopted without changes to the proposed text as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2969) and will not be republished. The section establishes the implementation of high school mathematics courses. The adopted amendment establishes in rule an implementation date of the 2006-2007 school year for the refined and aligned high school mathematics TEKS. A corresponding amendment to §111.21 relating to implementation of middle school mathematics TEKS is also adopted in this issue.

The SBOE recently concluded the review process for the secondary mathematics TEKS in the areas of mathematics, Grades 6-8 (including Grade 6 Spanish mathematics); Algebra I and II; Geometry; Precalculus; and Mathematical Models with Applications. The review process included review of the TEKS by a work group of teachers, central office staff, and university personnel. After the work group refined and aligned the secondary mathematics TEKS, the draft revisions were placed on the Texas Education Agency (TEA) web site in the form of a survey to collect feedback from the public beginning in mid-May 2004. A summary of the survey results was provided to the SBOE at the July 2004 meeting.

The draft revisions were also provided to a review panel consisting of three highly regarded mathematics experts. At the September 2004 meeting, the SBOE was presented with a description of the expert reviewers' comments on the alignment and refinement of the TEKS. The SBOE approved the proposed amendments to 19 TAC Chapter 111, Subchapters B and C, for first reading and filing authorization at the November 2004 meeting. Subsequent to the November meeting, the TEA staff placed a second survey on the TEA website to collect feedback regarding implementation. The survey results, which consisted primarily of responses from teachers and other school district personnel, were shared with the SBOE during the February 2005 meeting. Results indicated a preference for a fall 2006 implementation date rather than implementation beginning in the 2005-2006 school year.

During the February 2005 meeting, the SBOE adopted amendments that refine and align the TEKS for secondary mathematics and specified that implementation begin with the 2006-2007 school year. Accordingly, language to amend applicable sections to reflect this implementation date is adopted.

The adopted amendment to 19 TAC Chapter 111, Subchapter C, §111.31, establishes in rule an implementation date of the 2006-2007 school year for the refined and aligned secondary mathematics TEKS, as adopted by the SBOE in February 2005. The amendment supersedes implementation dates that are no longer necessary. The amendment is adopted to be effective August 1, 2006, for implementation with the 2006-2007 school year.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendment implements the Texas Education Code, §§7.102, 28.002, and 28.025.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.6, §215.7

The Board of Nurse Examiners (Board) adopts amendments to §215.6 and §215.7, concerning Professional Nursing Education. Section 215.7 is adopted with changes to the text as proposed in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2823). Section 215.6 is adopted without changes and will not be republished.

The proposal amended §215.6(f)(2) and §215.7(c) by adding an option of a doctorate degree in nursing to the requirements for a dean, director and nursing faculty, and the requirement that a dean or director be required to teach not more than three clock hours per week was moved from §215.7, Faculty Qualifications, to §215.6 under the Dean and Director qualifications. In addition, the existing language in §215.6(g)(1) was modified to provide clarity in the intent of the rule.

Two comments from one individual were received requesting that the Board consider the addition of the wording "or doctorate degree" into proposed §215.7(c)(1)(D) to be reflective of the intent of proposed §215.7(c)(1)(C) and to encourage more individuals to become nurse faculty at schools of nursing. The Board agrees with this proposal and believes that in order to provide consistency to the proposed amendment in §215.7(c)(1)(C), the wording "or doctorate degree" should be added to §215.7(c)(1)(D).

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§215.7. Faculty Qualifications and Faculty Organization.

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the governing institution. Policies which differ from those of the governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(1) Policies concerning workload for faculty and the dean or director shall be in writing.

(2) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process.

(3) Teaching activities shall be coordinated among full-time, part-time faculty, clinical preceptors and clinical teaching assistants.

(b) A professional nursing education program shall employ sufficient faculty members with graduate preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

(1) The number and level of students enrolled;

(2) The curriculum plan;

(3) Activities and responsibilities required of faculty;

(4) The number and geographic locations of affiliating agencies and clinical practice settings; and

(5) The level of care and acuity of clients.

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the programs. Each nurse faculty member shall:

(A) Hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in subject area of teaching responsibility;

(C) Hold a master's degree or doctorate degree, preferably in nursing.

(D) A nurse faculty member holding a master's degree or doctorate degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an approved or accredited baccalaureate program in nursing; and

(i) if teaching in a diploma or associate degree nursing program, shall have at least six semester hours of graduate level content in nursing appropriate to assigned teaching responsibilities, or

(ii) if teaching in a baccalaureate level program, shall have at least 12 semester hours of graduate-level content in nursing appropriate to assigned teaching responsibilities.

(E) In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in this subsection, the dean or director is permitted to petition for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.

(F) In baccalaureate programs, an increasing number of faculty members should hold doctoral degrees appropriate to their responsibilities.

(2) All nursing faculty, as well as non-nursing faculty, who teach theory nursing courses, e.g., pathophysiology, pharmacology, research, management and statistics, shall have graduate level educational preparation verified by the program dean or director as appropriate to these areas of responsibility.

(3) Non-nursing faculty assigned to teach didactic nursing courses shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(d) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(e) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities.

(f) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change of academic policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(1) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(2) Minutes of faculty organization and committee meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(g) There shall be written plans for faculty orientation, development, and evaluation.

(1) Orientation of new faculty members shall be initiated at the onset of employment.

(2) A program of faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty member's professional development needs.

(3) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200503006
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: August 11, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 305-6823

♦ ♦ ♦

CHAPTER 223. FEES

22 TAC §223.1

The Board of Nurse Examiners adopts the repeal of §223.1, concerning Fees. The proposed repeal of this section was in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3509).

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. During the subsequent months, the fees were adjusted to consolidate the fees previously imposed by two different boards. Due to the need to rearrange the entire section, and to finalize the fees necessary to implement the budget of the 79th Legislative Session, the board adopts the repeal of the existing rule and adopts a new §223.1 concurrent with this repeal.

No comments were received in response to this proposal.

This repeal is adopted under §301.151 of the Texas Occupations Code which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200502992
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: August 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-6823

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22 TAC §223.1

The Board of Nurse Examiners adopts new §223.1, concerning Fees without changes to the text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3509). The text of the rule will not be republished.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. During the subsequent months, the fees were adjusted to consolidate the fees previously imposed by two different boards. Due to the need to rearrange the entire section, and to finalize the fees necessary to implement the budget of the 79th Legislative Session (Senate Bill 1), the board has repealed the existing rule concurrently with this adoption. The legislature required criminal background checks on nurses in the 78th Legislative Session, but failed to fund such checks until the current session. The legislature also authorized additional funding for the Texas Peer Assistance Program for Nurses (TPAPN), pay raises for state employees, and a recoupment of a previous five percent reduction in the board's appropriations.

No comments were received in response to this proposal.

The new rule is adopted under §301.151 of the Texas Occupations Code which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2005.

TRD-200502993
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: August 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-6823

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.310, 65.314, 65.315, 65.319

The Texas Parks and Wildlife Department (the department) adopts amendments to §§65.310, 65.314, 65.315, and 65.319, concerning the Migratory Game Bird Proclamation. Sections 65.314 and 65.315 are adopted with changes to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2842). Sections 65.310 and 65.319 are adopted without changes and will not be republished.

The change to §65.314, concerning Zones and Boundaries for Early Season Species, implements a Special Whitewing Dove Area (SWDA) different from that described in the proposal. The department proposed to establish Interstate Highway 37 as the eastern boundary of the SWDA. The U.S. Fish and Wildlife Service (Service) did not approve the proposed expansion, but did authorize the department to expand the SWDA to Interstate Highway 35. The change also retains current terminology with respect to zone designations. The proposal to increase the size of the SWDA was accompanied by a corresponding change to rename the South Dove Zone as the Southeast Dove Zone. Owing to the relatively modest increase in the size of the SWDA effected in this rulemaking, the current description is deemed to be more appropriate and is therefore being retained.

The change to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season Species, retains the current designation of a portion of the state as the South Dove Zone, for reasons previously discussed in the changes to §65.314. The change also increases the mourning dove bag limit during the special whitewing dove season from three to four, which also causes the possession limit for mourning doves to change from six to eight. The change is necessary because although the department proposed a three-dove bag limit to the Service as part of the proposed enlargement of the SWDA, the Service's frameworks allowed a four-dove bag limit for mourning doves. In keeping with the commission's policy of adopting regulations that offer the greatest opportunity possible under federal frameworks for Texas hunters, the higher bag limit is being adopted. The change also implements a nine-day teal season. The department proposed a 16-day teal season, but the Service has authorized only nine days of teal hunting in Texas, and the state cannot adopt season lengths longer than those allowed by the Service.

The amendment to §65.310, concerning Zones and Boundaries for Early Season Species, reinstate specific language from federal regulations delineating the means and methods that are lawful and unlawful for the take of migratory game birds. Prior to 1997, the Texas regulation governing means, methods, and manners for the take of migratory game birds was a verbatim repetition of the federal rules located at 50 CFR §20.21. The federal rules consist of a list of lawful means, methods, and manners and a list of unlawful means, methods, and manners. In 1997 the department initiated an effort to reduce the overall volume of regulations. As part of that effort, the department decided to reduce regulatory volume in the Migratory Game Bird Proclamation, in part, by removing the lengthy list of *unlawful* means, methods, and manners from the rules and replacing that list with a proviso that all means, methods, and manners other than those listed as lawful were unlawful. In general, this approach has worked well over the intervening years; however, there have been cases where confusion has arisen and the department's Law Enforcement Division has determined that reinstatement of the original wording is necessary.

The amendment to §65.314, concerning Zones and Boundaries for Early Season Species, alters the zone boundaries of the South Zone and the Special Whitewing Dove Area (SWDA). Increases in whitewing density and distribution have eliminated the need for a restricted hunting area and season. Since the inception of the SWDA in 1984, whitewings have expanded their breeding range throughout Texas, with the highest densities located in urban areas of the South Texas Plains south and west of San Antonio. Since 1994, more whitewings have been counted annually in the expansion area than in their historic range. Whitewings now dominate the bag of most hunters in the vicinity of the larger towns (i.e., San Antonio, Hondo,

Uvalde, Sabinal, and Brackettville) in the Central Zone, where the hunting season opens September 1. However, equally high densities occur farther south and east in Pearsall, Falfurrias, Kingsville, Three Rivers, Freer, and George West, where hunters don't have access to them until after September 20, by which time most whitewings have migrated out of the area. The Service has authorized the department to enlarge the SWDA by expanding it eastward to Interstate Highway 35. Nesting studies conducted in the 1980s by the department indicate that the vast majority of white-winged doves have finished nesting and fledged their young by September 1, whereas for mourning doves, approximately 4% of nests were initiated after September 1, 6% of the seasonal eggs and nestlings were present after September 1, and 89% of nestlings have been fledged by that time. The impact of the boundary change on mourning dove populations is expected to be minimal, since significantly large numbers of mourning doves inhabit urban areas where ordinances prohibit the discharge of firearms, and because the hunting season, although it would begin earlier and nearer September 1, will be restricted to half-days on weekends for the first two weeks of September (the current season structure for the Special Whitewing Season). Additionally, the bag limit for mourning doves in the SWDA is being reduced from five to four during the Special Whitewing Season in order to reduce potential negative impacts on mourning dove populations.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season Species, adjusts the season dates for early-season species of migratory game birds to account for calendar-shift (an annual adjustment to ensure that seasons open on the correct day of the week). Additionally, the aggregate bag limit is increased from 10 to 12, while the bag limit for mourning doves in the Special Whitewing Dove Area is reduced from five to four during the Special Whitewing Season. The increase in the aggregate bag limit will effectively be an increase in the whitewing dove bag limit, since the mourning dove component of the whitewing bag limit is being reduced. The mourning dove component of the aggregate bag limit is being reduced in order to minimize potential negative impacts on mourning dove populations as a result of enlarging the size of the area. Additionally, the amendment implements a nine-day teal season.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service.

The amendments will function by establishing means, methods, special requirements, times, and places for the hunting of early-season species of migratory game birds, as well as daily bag and possession limits.

The department received 11 comments opposing adoption of the proposed amendment to reinstate specific language from federal regulations delineating the means and methods that are lawful and unlawful for the take of migratory game birds. Two commenters articulated a specific reason or reasons for opposing adoption of the proposed amendment. The comments and the agency response are as follows.

One commenter opposed adoption of the proposed amendment and stated that rather than reproducing the federal regulatory language in the rules, the department should cite a reference to the applicable federal law. The department disagrees with the comment and responds that the purpose of the amendment is to create a single reference for hunters. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed amendment and stated that the court should decide if a violation occurred, based on the information of the case, and that listing of lawful means should be sufficient to that end. The department disagrees with the comment and responds that the intent of the amendment is to remove confusion and doubt in the field, thereby possibly preventing the need for determinations by the court in some cases. No changes were made as a result of the comment.

The department received 57 comments supporting adoption of the rules.

The department received seven comments opposing adoption of the proposed amendment to alter the zone boundaries of the South Zone and the Special Whitewing Dove Area (SWDA). Three commenters articulated a specific reason or reasons for opposing adoption of the proposed amendment. The comments and the agency response are as follows.

Three commenters opposed adoption of the proposed amendment and stated that the expansion of the SWDA should have included Victoria and the area between U.S. Highway 77 and Interstate Highway 37. The department disagrees with the comment and responds that the department has no authority to expand the SWDA beyond the boundaries approved by the Service. No changes were made as a result of the comments.

The department received 88 comments supporting adoption of the proposed amendment.

The department received nine comments opposing adoption of the proposed amendment establishing dove seasons and bag limits. Seven commenters articulated a specific reason or reasons for opposing adoption of the proposed amendment. The comments and the agency response are as follows.

One commenter opposed adoption of the proposed amendment and stated that the proposed second split of the season in the Central Zone is far too short. The commenter stated that dove numbers are healthy in this area and great numbers of hunters seek them. The commenter also stated that the short second split will impact retail sales for dove hunting equipment and needs. The department disagrees with the comment and responds that hunter preference is for the season structure as adopted. The department also responds that hunter numbers and dove numbers are not dependent on the dates selected for hunting opportunity, but on various factors of the natural world that are beyond the control of the department. The department also responds that it does not believe the timing of the second split is a factor affecting the retail sales of hunting equipment. No changes were made as a result of the comment.

Four commenters opposed adoption of the proposed amendment and stated that there should be a statewide 15-bird bag limit. The department disagrees with the comments and responds that harvest and hunter surveys indicate that a longer season and lower bag limit is favored by hunters in the South and Central Zones, while the shorter season and higher bag limit is

preferred by most hunters in the North Zone. No changes were made as a result of the comments.

One commenter opposed adoption of the proposed amendment and stated that daily limit in the North Zone should be reduced to 12 birds per day. The department disagrees with the comment and responds that the shorter season and higher bag limit is preferred by most hunters in the North Zone. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed amendment and stated that the department should implement a winter segment in the North Zone. The department disagrees with the comment and responds that harvest and hunter surveys indicate that a longer season and lower bag limit is favored by most hunters in the South and Central Zones, while the shorter season and higher bag limit is preferred by hunters in the North Zone. No changes were made as a result of the comments.

The department received 100 comments supporting adoption of the rules.

The department received no comments opposing adoption of the proposed amendment establishing seasons and bag limits for gallinules. The department received 23 comments supporting adoption of the proposed amendment.

The department received nine comments opposing adoption of the proposed amendment establishing seasons and bag limits for teal ducks. Four commenters articulated a specific reason or reasons for opposing adoption of the proposed amendment. The comments and the agency response are as follows.

One commenter opposed adoption of the proposed amendment and stated that there should be a nine-day season beginning the September 22 or 23 because the teal arrived late last year. The department disagrees with the comment and responds that teal season is set to occur when the majority of teal are in the state, and that the season as adopted is consonant with hunter preference. No changes were made as a result of the comment.

Three commenters opposed adoption of the proposed amendment and stated that the four-bird bag limit was too low. The department disagrees with the comment and responds that the bag limit is the maximum permitted under federal law. No changes were made as a result of the comments.

The department received 88 comments supporting adoption of the proposed amendment.

The department received one comment opposing adoption of the proposed amendment establishing seasons and bag limits for woodcock. The commenter stated that the season on woodcock should be closed to allow numbers to increase. The department disagrees with the comment and responds that woodcock populations are not believed to be declining, and that in any event, hunting pressure is slight and therefore not a significant factor in population variation.

The department received 29 comments supporting adoption of the proposed amendment.

The department received no comments opposing adoption of the proposed amendment establishing seasons and bag limits for snipe.

The department received 26 comments supporting adoption of the proposed amendment.

The department received no comments opposing adoption of the proposed amendment establishing seasons and bag limits for the take of early-season migratory birds by means of falconry. The department received 14 comments supporting adoption of the proposed amendment.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.314. Zones and Boundaries for Early Season Species.

(a) Rails: statewide.

(b) Mourning and white-winged doves.

(1) North Zone: That portion of the state north of a line beginning at the International Bridge south of Fort Hancock; thence north along FM 1088 to State Highway 20; thence west along State Highway 20 to State Highway 148; thence north along State Highway 148 to Interstate Highway 10 at Fort Hancock; thence east along Interstate Highway 10 to Interstate Highway 20; thence northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; thence northeast along Interstate Highway 30 to the Texas-Arkansas state line.

(2) Central Zone: That portion of the state between the North Zone and the South Zone.

(3) South Zone: That portion of the state south of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to State Loop 1604; thence following Loop 1604 south and east to Interstate Highway 10; thence east along Interstate Highway 10 to the Texas-Louisiana State Line.

(4) Special white-winged dove area: That portion of the state south and west of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to State Loop 1604; thence along Loop 1604 south and east to Interstate Highway 35, thence south along Interstate Highway 35 to State Highway 44; thence east along State Highway 44 to State Highway 16 at Freer; thence south along State Highway 16 to State Highway 285 at Hebbronville; thence east along State Highway 285 to FM 1017; thence southeast along FM 1017 to State Highway 186 at Linn; thence east along State Highway 186 to the Mansfield Channel at Port Mansfield; thence east along the Mansfield Channel to the Gulf of Mexico.

(c) Gallinules (Moorhen or common gallinule and purple gallinule): statewide.

(d) Teal ducks (blue-winged, green-winged, and cinnamon): statewide.

(e) Woodcock: statewide.

(f) Wilson's (Common) snipe: statewide.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 10 - 25, 2005 and October 29 - December 21, 2005.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2005.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 30, 2005 and December 26, 2005 - January 4, 2006.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 23 - November 10, 2005 and December 26, 2005 - January 15, 2006.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 3, 4, 10, and 11, 2005.

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 23 - November 10, 2005 and December 26, 2005 - January 11, 2006.

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 10 - 25, 2005 and October 29 - December 21, 2005.

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 17 - 25, 2005.

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2005 - January 31, 2006. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): October 29, 2005 - February 12, 2006. The daily bag limit is eight. The possession limit is 16.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 25, 2005.

TRD-200503022
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: August 14, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 389-4775

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Building and Procurement Commission

Title 1, Part 5

In accordance with the rule review plan filed September 13, 2000, and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and pursuant to the Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) proposes to review and consider for re-adoption, re-adoption with amendments or repeal 1 TAC Chapter 111, §§111.1 - 111.7; 111.11 - 111.22; 111.24 - 111.28; and 111.61 - 111.71, concerning administration, historically underutilized business program, and the cost of copies of public information.

TBPC seeks to determine whether the basis for the original adoption of each rule in Chapter 111 continues to exist. The rules remain valid and applicable.

Comments on the proposed review may be submitted in writing to Elizabeth J. Boyt, Office of the General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to elizabeth.boyt@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within 30 days of the publication date.

TRD-200502988
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: July 22, 2005

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In accordance with the rule review plan filed September 13, 2000, and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and pursuant to the Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) proposes to review and consider for re-adoption, re-adoption with amendments or repeal 1 TAC Chapter 113, concerning the procurement division.

TBPC seeks to determine whether the basis for the original adoption of each rule in Chapter 113 continues to exist. The rules remain valid and applicable.

Comments on the proposed review may be submitted in writing to Elizabeth J. Boyt, Office of the General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to elizabeth.boyt@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within 30 days of the publication date.

TRD-200502989
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: July 22, 2005

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In accordance with the rule review plan filed September 13, 2000, and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and pursuant to the Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) proposes to review and consider for re-adoption, re-adoption with amendments or repeal 1 TAC Chapter 123, concerning facilities construction and space management division.

TBPC seeks to determine whether the basis for the original adoption of each rule in Chapter 123 continues to exist. The rules remain valid and applicable.

Comments on the proposed review may be submitted in writing to Elizabeth J. Boyt, Office of the General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to elizabeth.boyt@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within 30 days of the publication date.

TRD-200502990
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: July 22, 2005

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Adopted Rule Review

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts without changes the rule review proposed for Title 4, Texas Administrative Code, Part 1, Chapter 2, concerning Licensing, pursuant to the Texas Government Code, §2001.039. The proposed notice of intent to review was published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3263). No comments were received on the proposal.

Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposed the amendment of Title 4, Part 1, §2.1 and §2.4 and the repeal of §2.2. The proposed amendments were published in the proposed rule section of the June 3, 2005, issue of the *Texas Register* (30 TexReg 3188). No comments were received on the proposed amendments.

The assessment of Title 4, Part 1, Chapter 2, conducted by the department at this time indicates that, with the addition of the adopted amendment to §2.1 and §2.4 and repeal of §2.2, the original justification for the rules continues to exist, and the department is readopting all sections in this chapter without changes.

TRD-200502977
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 21, 2005

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §101.23(b)

Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards

Scale Scores Required to Achieve the "Met Standard" Level
At the Standard Equivalent to the Panel's Recommendation
Effective Beginning Spring 2008

	Science		
Grade	Total TAKS Test Items	TAKS Scale Score Cut	TAKS Raw Score Cut
8	50	2100	33*

At the Standard Equivalent to 1 SEM below the Panel's Recommendation
Effective Beginning Spring 2007

	Science		
Grade	Total TAKS Test Items	TAKS Scale Score Cut	TAKS Raw Score Cut
8	50	**	30***

At the Standard Equivalent to 2 SEM below the Panel's Recommendation
Effective Beginning Spring 2006

	Science		
Grade	Total TAKS Test Items	TAKS Scale Score Cut	TAKS Raw Score Cut
8	50	**	27

Scale Scores Required to Achieve "Commended Performance"
Effective Beginning Spring 2006

	Science		
Grade	Total TAKS Test Items	TAKS Scale Score Cut	TAKS Raw Score Cut
8	50	2400	44****

* The 2008 test form will be equated to the 2006 test form. The standard required in 2008 will then be equivalent to achieving a score of 33 out of 50 questions on the spring 2006 test form.

** Scale score calculated on spring 2006 operational test form.

*** The 2007 test form will be equated to the 2006 test form. The standard required in 2007 will then be equivalent to achieving a score of 30 out of 50 questions on the spring 2006 test form.

**** Subsequent to 2006, test forms will be equated and the commended performance standard will then be equivalent to achieving a score of 44 out of 50 questions on the spring 2006 test form.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Open Solicitation #2 for Donley County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324(c), secondary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Donley County, County #065**. Medicaid nursing facility occupancy rates in **Donley County** exceeded the 90% occupancy threshold for six consecutive months during the period of **November 2004 through April 2005**. The county occupancy rates for each month of that period were: **96.8%, 96.7%, 97.7%, 98.5%, 96.8%, 97.7%**. In accordance with the requirements contained in 40 TAC §19.2324(c), DADS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business September 6, 2005, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary selection process is received or if no applicant meets the requirements in §19.2324(c), no further solicitation will occur.

TRD-200503080
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: July 27, 2005

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Texas Department of Agriculture

Request for Proposals: GO TEXAN Partner Program

Pursuant to the Texas Agriculture Code, §§46.001-46.013, relating to the GO TEXAN Partner Program, and 4 Texas Administrative Code §§17.300-17.310, the Texas Department of Agriculture (the department) hereby requests proposals for GO TEXAN Partner Program projects for the period of September 1, 2005 through August 31, 2007. The GO TEXAN Partner Program (GOTEPP) is a dollar-per-dollar matching fund promotion program designed to increase consumer awareness of Texas agricultural products and expand the markets for Texas agricultural products by developing a general promotional campaign for Texas agricultural products and advertising campaigns for specific Texas agricultural products based on project requests submitted by successful applicants. GOTEPP and project proposal application information can be obtained by utilizing the department's web site: www.GOTEXAN.org, or by contacting the Funding Coordinator for Marketing and Promotion at 512-463-7731 or 512-463-8382.

Eligibility. An eligible applicant must be a state or regional organization or board that promotes the marketing and sale of Texas agricultural products and does not stand to profit directly from specific sales of agricultural commodities, a cooperative organization, as defined by 4 Texas Administrative Code §17.301, a state agency or board that promotes the marketing and sale of Texas agricultural products, a small business, as defined by 4 Texas Administrative Code §17.301, or any other entity that promotes the marketing and sale of Texas agricultural products. For purposes of this section, the department has the sole discretion to determine whether an entity meets program eligibility requirements.

Proposal Requirements. To be eligible for participation in the program through the use of matching funds under this program, an applicant must be a member of the GO TEXAN promotional marketing membership program in good standing, be an eligible applicant under GOTEPP rules, prepare and submit a project request in accordance with GOTEPP rules, submit a sworn affidavit certifying that applicant is not currently delinquent in the payment of any franchise taxes owed the State of Texas, submit a sworn affidavit disclosing any existing or potential conflict of interest relative to the evaluation of the project plan by the GOTEPP Advisory Board, and submit to the department cash matching funds as specified in the project request and in accordance with the GOTEPP rules and guidelines.

Each project request submitted by an eligible applicant must describe the advertising or other market-oriented promotional activities to be carried out using matching funds and must include a cover page including the name, title, and address of applicant; a table of contents; an abstract of approximately 200 words or less, on one page, including the title, if any, a brief description of the project, project plan and methodology, and expected contribution to further or enhance the GO TEXAN Program; a detailed specific narrative or factual description of the project; anticipated benefits to a specific region of the state and to specific commodities; any preliminary market research and sales percent increases to be achieved as a result of the project; a biography of the applicant; a description of the business entity; a detailed project budget including specific dollar amounts for all potential costs; and a description of how anticipated sales increases due to implementation of the projects will be quantified and reported to the department on a form provided by the department. Please send one original for initial review by the Funding Coordinator and then follow up with 10 additional copies, when requested by the Funding Coordinator, that will be distributed to the GOTEPP Advisory Board.

All approved projects must be completed by July 31, 2007, or the date specified in the project contract, whichever is earlier. All approved projects will be subject to audit and periodic reporting requirements.

Proposals should be submitted to: Debbie Wall, Funding Coordinator for Marketing and Promotion, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701. Ms. Wall may be contacted by telephone at (512) 463- 7731 or by fax at 1-888-223-5717 for additional information about preparing the proposal. Proposals will be accepted by the department on a continuous basis until all available funds are depleted.

All qualifying proposals will be evaluated by the GO TEXAN Partner Program Advisory Board appointed by the Commissioner of Agriculture. This panel consists of representatives from the following: the Texas Department of Agriculture, radio media, print media, television media, advertising, higher education, United States Department of Agriculture Commodity Credit Corporation (non-voting), Internet website or electronic commerce industry, the field of economic analysis, an agriculture producer representative and a consumer representative. Proposals will be selected for funding on a competitive basis. Preference will be given to project requests that are unique in nature and avoid duplication with other project requests that are being funded by the department. Only project requests that further or enhance the department's GO TEXAN Program and are submitted by applicants who are physically located in Texas or who have their principal place of business in Texas will be funded. The announcement of the grant awards will be made at GOTEPP Advisory Board meetings held at least once quarterly.

TRD-200503077
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 26, 2005

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Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Office of Attorney General, announces the issuance of Request for Proposal (RFP) #303-5-11291. TBPC seeks a ten year lease of approximately 7,733 square feet of office space in Fort Worth, Tarrant County, Texas. Lease space must be located within one of the following zip codes: 76102, 76106, 76107, 76111, 76114 or 76127.

The deadline for questions is August 12, 2005 and the deadline for proposals is August 17, 2005 at 3:00 P.M. The award date is September 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=60353.

TRD-200503073
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: July 26, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 15, 2005, through July 21, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 27, 2005. The public comment period for these projects will close at 5:00 p.m. on August 26, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: St. Mary Land & Exploration; Location: The project is located in Galveston Bay, State Tract (ST) 345, approximately 3.4 miles northerly from Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 323605; Northing: 3254559. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities in ST 345. Such activities include installation of typical marine barges and keyways; a shell and gravel pad associated with the Holly Prospect, production structures with attendant facilities, and flowlines. Approximately 4,548 cubic yards of material would be placed in approximately 0.5 acre of bay bottom for a shell pad. CCC Project No.: 05-0377-F1; Type of Application: U.S.A.C.E. permit application #23862 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Falcon Bay Energy, L.L.C.; Location: The project site is located in State Tract (ST) No. 58, in Trinity Bay, southwest of Oak Island, offshore Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Oak Island, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 330620; Northing: 3278678. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, and production of the East Umbrella Prospect well, in ST 58. Such activities include installation of typical marine barges and keyways, shell and gravel pads, and production structures with attendant facilities. Approximately 4,548 cubic yards of shell will be required to construct a 235-foot-long by 95-foot-wide drill pad. Water depth at the project site is approximately -9 feet. No wetlands or vegetated shallows will be impacted as a result of the proposed activity. CCC Project No.: 05-0381-F1; Type of Application: U.S.A.C.E. permit application #23836 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Tempest Energy Resources; Location: The project is located approximately 1.2 miles north of San Leon, in Galveston Bay, State Tract (ST) 307, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 314742; Northing: 3266199. Project Description: The applicant proposes to drill the ST 307 Well No. 1, and install, operate and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, a shell and gravel pad, and production structures with attendant facilities, and flowlines. The proposed site is

located in approximately 10 feet of water. Approximately 2,667 cubic yards of shell/gravel would be required for the proposed pad (240 by 100 by 3 feet) that may be laid prior to installing the marine barge rig. No dredging is required for this project for access but it is unknown at this time whether the proposed flowline (not sales line) between the well platform and production platform would be trenched/jetted or installed along a catwalk. If trenching or jetting were used during the flowline installation it would result in some temporary displacement of bay bottom material. CCC Project No.: 05-0382-F1; Type of Application: U.S.A.C.E. permit application #23850 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200503068
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: July 26, 2005

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403, Chapter 2305, §2305.038, and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the issuance of its Request for Proposals (RFP #172N) for energy engineering services from qualified independent firms and qualified energy engineers, to provide energy engineering services for the Schools and Local Government Program (Program). Successful Respondent(s) will be asked to assist Comptroller in performing energy engineering services and conducting other activities related to the Program. Successful Respondent(s) will be expected to begin performance of any contract(s) resulting from this RFP on or about September 5, 2005.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th Street, ROOM G-24, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, August 5, 2005, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also plans to place the RFP on the Texas Marketplace after Friday, August 5, 2005, 10:00 a.m. (CZT). All written inquiries and Non-Mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Friday, August 19, 2005. Non-Mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of each entity. All responses to questions will be posted electronically on Monday, August 22, 2005, on the Texas Marketplace at: http://esbd.tbpc.state.tx.us. Prospective respondents are encouraged to fax the Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered.

Closing Date: Proposals must be received in the Assistant General Counsel, Contracts Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Monday, August 29, 2005. Proposals received after this time and proposals submitted by facsimile will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP--Friday, August 5, 2005, 10:00 a.m. CZT;

Non-Mandatory Letters of Intent and Questions Due--Friday, August 19, 2005, 2:00 p.m. CZT;

Posting of Official Responses to Questions--Monday, August 22, 2005;

Proposals Due--Monday, August 29, 2005, 2:00 p.m. CZT;

Contract Execution--September 5, 2005, or as soon thereafter as practical;

Commencement of Project Activities--September 5, 2005, or as soon thereafter as practical.

TRD-200503086
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 27, 2005

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Public Notice of Court Costs and Fees

Texas Government Code, §51.607 requires that the comptroller publish a list of all court costs and fees imposed or changed during the most recent regular session of the Legislature. This section also provides that notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee, the change does not take effect until the next January 1 after the law takes effect, unless the bill makes a specific exception. If the bill takes effect prior to August 1 or after January 1, then the court cost or fee takes effect upon the effective date of the bill.

The listing of court costs and fees to be identified and published as required by §51.607 are as follows:

Senate Bill 6

Protective Services and Family Law Issues

Effective January 1, 2006. Senate Bill 6 amends Government Code, §51.961, to require, rather then merely authorize, county commissioners court to adopt a family protection fee and to increase the maximum fee from $15 to no more than $30. It also requires the county clerk to pay one-half of the fees collected to the comptroller for deposit in the child abuse and neglect prevention trust fund account and one-half to

the county's family protection account. Senate Bill 6 exempts political subdivisions from posting a bond or paying the cost or fee in guardianship proceedings.

A person convicted of an offense regarding child sexual assault as identified under Penal Code, §§21.11, 22.011(a)(2), 22.021(a)(1)(B), 43.25, 43.251 or 43.26, is required to pay $100 at the time of conviction. The clerks of the respective courts shall collect the costs for deposit in a fund to be known as the County Child Abuse Prevention Fund, which can only fund child abuse prevention programs in the county where the court is located. The commissioners court shall administer or direct the County Child Abuse Prevention Fund.

A person who applies for certification to provide guardianship services must submit a nonrefundable application fee with the application in a reasonable amount to be established by the Guardianship Certification Board and approved by the Texas Supreme Court. A Department of Aging and Disability Services employee who is applying for a certificate under this section to provide guardianship services to a ward of the department is exempt from paying the application fee.

Senate Bill 241

Creating an Appellate Judicial System

Effective January 1, 2006. Senate Bill 241 amends Government Code, Chapter 22, Subchapter C. To fund the appellate judicial system for the Third Court of Appeals District, the commissioners courts within this district shall set a court cost fee of $5 for each civil suit filed in county court, county court at law, probate court or district court in the county.

Senate Bill 526

County Authority to Impose Records Archive Fee

Effective June 17, 2005. Senate Bill 526 gives county clerks authority to designate which public documents they will archive, although the designation is subject to the commissioners court's approval. It also raises the archiving fee to $25, with $22.50 designated for the county's records management and preservation fund and the remaining $2.50 designated for the county clerk's records management and preservation fund. Funds may only be used for records management and preservation.

Senate Bill 1014

Records on Appeal

Effective May 9, 2005. Senate Bill 1014 amends Government Code, §30.00014, subsections (b), (f), and (g), and Government Code, §101.181. A municipality shall by ordinance establish a fee for preparing the clerk's record in the amount of $25. The fee does not include the fee for an actual transcription of the proceedings. The clerk shall note the payment on the court docket. If the case is reversed on appeal, the fee will be refunded to the defendant.

The clerk of the municipal court of record shall collect $25 from an appellant for preparation of the clerk's record (Government Code, §30.00014).

Senate Bill 1424

Filing Fees in Civil Matter in Justice Court

Effective January 1, 2006. Senate Bill 1424 adds the filing of a counterclaim to the types of filings subject to fee for services under Local Government Code, §118.121(1). A justice of the peace shall collect the fees for services rendered to any person before judgment. The fees are $15 for services rendered in justice court and $10 in small claims court. The plaintiff or the party initiating the action or counterclaim pays the fee once for each action or counterclaim.

Senate Bill 1426

Application for Expunction

Effective January 1, 2006. Senate Bill 1426 amends Code of Criminal Procedure, Article 45.0216, subsection (i), Article 45.055, subsection (d); Health and Safety Code, §161.255; and Government Code, §103.021 to require courts to charge fees to individuals applying for expunction of offenses committed by minors. A defendant or a party to a civil suit must pay a $30 fee per application to defray the cost of notifying state agencies of expungement orders (Code of Criminal Procedure, Article 45.0216 and 45.055; Alcoholic Beverage Code, §106.12; and Health and Safety Code, §161.255). The law in effect when the application was filed covers applications filed before the effective date of this Act.

Senate Bill 1524

Fees Charged for Vital Statistics Records

Effective January 1, 2006. Senate Bill 1524 allows county clerks to charge the same fee charged by the Bureau of Vital Statistics for issuing a certified copy of a birth or death certificate. A local registrar or county clerk charging a fee that exceeds the fee set by the Bureau of Vital Statistics cannot raise the fee until the Bureau's fee exceeds the local registrar's/county clerk's established fee. County clerks, as well as local registrars, may charge an additional $1 for preserving vital statistics of birth, death, fetal death, marriage, and divorce and annulment records.

Senate Bill 1704

Jury Service

Effective January 1, 2006. Senate Bill 1704 amends Government Code, Chapter 61 requiring that each grand or petit juror in a civil or criminal case in a district court, criminal district court, county court, county court at law or justice court is entitled to receive reimbursement for travel and other expenses of no less than $6 for the first day or fraction of the first day served as a juror and no less than $40 for each day or fraction of each day served as a juror after the first day. The state shall reimburse a county $34 a day for the reimbursement paid to a grand juror or petit juror under §61.001 for each day or fraction of each day served as a juror after the first day. The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller, who shall pay claims for reimbursement under this section quarterly. If sufficient funds are not available to satisfy the claims for reimbursement filed by the counties, the comptroller shall apportion the available money among the counties by reducing the amount payable to each county on an equal percentage basis. If a payment on a county's claim for reimbursement is reduced, or if a county fails to file the claim for reimbursement in a timely manner, the comptroller shall pay the balance owed to the county when sufficient money is available or carry forward the balance owed to the county and pay the balance to the county when the next payment is required.

Senate Bill 1704 also amends Government Code, §102.021 and adds §102.0045 to require a person convicted of any offense, other than an offense relating to a pedestrian or to parking a motor vehicle, shall pay, in addition to all other costs, a $4 fee to reimburse counties for the cost of juror services as provided by Government Code, §61.0015. The court's clerk shall remit the fees collected under this article to the comptroller for deposit in the jury service fund created in the state treasury. If, at any time, the unexpended balance of the jury service fund exceeds $10 million, the comptroller shall transfer the amount in excess to the fair defense account.

House Bill 703

Deferral of Adjudication Involving Misdemeanor Traffic Cases

Effective January 1, 2006. House Bill 703 amends Code of Criminal Procedure, Article 45.0511, subsection (c) and adds subsection (c-1). A judge may require a defendant to pay $10 for a copy of a driving record when a defendant requests a driving safety course or a motorcycle operator training course dismissal. The $10 fee is in addition to any other fee required under this article. The municipal or county treasurer must keep a record of the fees and forward the fees to the comptroller, without deducting a service fee. The comptroller shall credit the fees received to the Texas Department of Public Safety.

House Bill 950

Fees for Filing Papers with County Clerk

Effective January 1, 2006. House Bill 950 increases the filing fees for personal or real property documents to $5 for the first page and $4 for each additional page. The previous fee for filing personal property records was $2. The previous fee for filing real property documents was $3 for the first page and $2 for each additional page.

House Bill 1404

Probate Filings

Effective January 1, 2006. House Bill 1404 amends Local Government Code. §118.052, and Government Code, §§101.081, 101.101, and 101.121 pertaining to fees collected by a county for filings in pending probate actions. The filing requires a fee of $25 if the document being filed is more than 25 pages in length and is not listed under §118.052(2)(B), or is not listed under Local Government Code, §191.007 and is filed after the filing of an order approving the inventory and appraisal or after the 120th day of the initial filing of the action, whichever occurs first.

House Bill 1418

Justice Court Technology and Assessing a Technology Fee

Effective January 1, 2006. House Bill 1418 amends Code of Criminal Procedure, Articles 102.0173 (a) and (d), and Government Code, §102.101, and requires, rather then merely authorizes, a commissioners court to establish a justice court technology fund. A person convicted of a misdemeanor offense in justice court shall pay a $4 justice court technology fee to be deposited into this fund.

House Bill 1575

Juvenile Delinquency

Effective January 1, 2006. House Bill 1575 creates a new local court cost for the Juvenile Case Manager Fund of up to $5.

House Bill 1751

Restitution by Criminal Defendants

Effective January 1, 2006. House Bill 1751 provides that a court can require a defendant to pay a one-time restitution fee of $12 if the defendant is making installment payments. The court shall retain $6 for the costs incurred in collecting specified installments and pay the remaining $6 to the compensation to victims of crime fund.

House Bill 1934

Security Fees in Justice Courts

Effective January 1, 2006. House Bill 1934 amends Code of Criminal Procedure, Article 102.017 (b), (d) and (e) to require a defendant convicted of a misdemeanor offense in a justice court to pay a $4 security fee as a cost of court, increasing the cost by $1.

House Bill 2026

Recovering Wildlife Enforcement Costs

Effective June 18, 2005. This bill pertains to recovering law enforcement costs and the taking and possession of wildlife or eggs. A person convicted of an offense shall pay the actual cost of any storage, care, feeding or processing necessary for an unlawfully taken, shipped or possessed game bird, fowl, animal, game fish or exotic animal. A person convicted of an offense may be required to pay the actual cost as a result of the investigation, reasonable attorney's fees and reasonable expert witness fees in a civil or criminal suit for recovery of the value of any fish, shellfish, reptile, amphibian, bird or animal.

House Bill 2626

False Alarms Penalties and Fees

Effective June 18, 2005. House Bill 2626 allows a county to assess a fee for responding to a false alarm by a constable's office. This fee is subject to enforced collection by the county attorney.

House Bill 3531

Dallas County District and County Court Administration and Services

Effective January 1, 2006. House Bill 3531 amends Government Code, §103.022. Human Resources Code, §152.0634 and §152.0635 are repealed. The following fees are repealed and cannot be charged: a $2 per page fee for a copy of records of spousal or child support and fees administered in Dallas County; a fee not exceeding $3 per month pertaining to the collection, distribution and monitoring of spousal and child support payments in Dallas County; and a fee not to exceed $250 for adoption, family and home study investigations in Dallas County.

TRD-200503019
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: July 25, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/05 - 08/07/05 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/05 - 08/07/05 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 [3]for the period of 08/01/05 - 08/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 08/01/05 - 08/31/05 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200503065

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 26, 2005

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Texas Commission on Environmental Quality

Notice of Availability of the Draft July 2005 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft July 2005 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas pollutant discharge elimination system (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft July 2005 WQMP update may be found on the commission's Web site located at *http://www.tnrcc.state.tx.us/permitting/waterperm/wqmp/index.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on September 5, 2005. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@TCEQ.state.tx.us*.

TRD-200503069
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 26, 2005

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Notice of District Petition

Notices mailed July 21, 2005 through July 26, 2005

TCEQ Internal Control No. 06232005-D01; Sig-Valley Ranch, LTD (Petitioner) filed a petition for creation of Valley Ranch Municipal Utility District No.1 of Montgomery County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Citizens Bank of Texas, on the property. to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 567.27 acres located within Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2004-1255, effective December 8, 2004, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $30,750,000.

TCEQ Internal Control No. 04212005-D01; Galilee Partners, L.P., (Petitioner) filed a petition for creation of Maypearl Water Control and Improvement District No.1 of Ellis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lienholders, Palestine Partners L.P, and Sanders Asset Management L.P, on the property to be included in the proposed District and by affidavit they have all consented to the petition; (3) the proposed District will contain approximately 227.67 acres located within Ellis County, Texas; and (4) the proposed District is within Ellis County and the Maypearl Independent School District, Texas, and no portion of land within the proposed District is within the extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks systems for residential, industrial and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection system and wastewater treatment plant; (3) control, abate and amend the harmful excesses of water, and the reclamation and drainage of overflowed lands within or affecting the District; and (4) construct, install, maintain, purchase, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is organized. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $11,100,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also

submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200503083
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 6, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 6, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Bettye Singletary dba Longhorn Ranch Motel; DOCKET NUMBER: 2004-0741-PWS-E; TCEQ ID NUMBERS: 0220032 and RN101276442; LOCATION: 13 miles north of Study Butte on Highway 118, Alpine, Brewster County, Texas; TYPE OF FACILITY: motel with a public water supply system; RULES VIOLATED: 30 TAC §290.46(d)(1) and (2)(A), §290.110(b)(4) and (c)(5)(A), by failing to maintain a disinfectant residual concentration of at least 0.2 milligrams per liter (mg/L) throughout the distribution system at all times and by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.110(d)(3)(C)(i) and (ii), by failing to possess a chlorine residual test kit that uses the N, N-diethyl-p-phenylenediamine colorimetric method to determine the free chlorine residual at various locations to ensure the proper chlorine residual is being maintained throughout the distribution system; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead with the use of gaskets or a pliable, crack-resistant caulking compound; 30 TAC §290.43(c)(2), by failing to keep all hatches locked except during inspections and maintenance; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence to protect the potable water ground storage tank; 30 TAC §290.46(f)(3)(B)(iii) and (D)(ii), by failing to maintain records of disinfectant residual monitoring results from the distribution system for at least three years and records of storage tank inspections for at least five years; 30 TAC §290.42(i), by failing to obtain a permit for discharging wastewater from the water treatment processes; 30 TAC §290.118(a) and (b) and Texas Health and Safety Code (THSC), §341.031(a), by failing to provide water that meets the commission's secondary constituent levels for sulfate (300 mg/L) and total dissolved solids (1,000 mg/L); and TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $1,418; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(2) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2004-0987-AIR-E; TCEQ ID NUMBERS: RN102450756 and JE0067I; LOCATION: 1795 Burt Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and (c) and THSC, §382.085(b), by failing to provide initial and final emissions events notifications in a timely manner; 30 TAC §116.116(b)(1) and THSC, §382.085(b), by failing to prevent unauthorized emissions at the plant from the Fluid Catalytic Cracking Unit Reactor Plenum; and 30 TAC §116.116(b)(1) and THSC, §382.085(b), by failing to maintain an emissions rate below the allowable limit of zero; PENALTY: $17,250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Oceanic Systems, Inc.; DOCKET NUMBER: 2004-0739-AIR-E; TCEQ ID NUMBER: RN100686880; LOCATION: 11990 Shiloh Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: aquarium manufacturing and aquarium cabinetry plant; RULES VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit prior to construction; PENALTY: $12,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Rhimco Industries, Inc.; DOCKET NUMBER: 1997-0036-IHW-E; TCEQ ID NUMBER: 32341; LOCATION: 4150 Britton Road, Mansfield, on the border of Ellis and Tarrant Counties, Texas; TYPE OF FACILITY: electro-plating facility; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste into or adjacent to waters in the state. Specifically, discharge of grey, semi-liquid wastewater from a metal parts cleaner discharging onto the ground in an area which flows toward an intermittent tributary that drains into Joe Pool Lake. In addition,

hazardous waste was spilled near the northwest corner of the facility. Also, TCEQ investigators observed an estimated five to ten gallons of cutting oil on the ground near the southwest corner of the facility's metal fabrication building. Soil samples collected from the soil in the discharge pathway of the oil indicate that the soil was contaminated with elevated levels of petroleum hydrocarbons; PENALTY: $26,400; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: South Texas Chlorine Inc.; DOCKET NUMBER: 2004-0142-MLM-E; TCEQ ID NUMBERS: CD-0085-I, TXRO5H669, and RN100943044; LOCATION: 8600 East Harrison, Harlingen, Cameron County, Texas; TYPE OF FACILITY: chemical repackaging plant; RULES VIOLATED: 30 TAC §116.115(c), THSC, §382.085(b), new source review (NSR) Permit Number 21286, Special Condition Number 8, by failing to properly monitor the concentration of the scrubbing solution at least once per shift; 30 TAC §116.115(c), THSC, §382.085(b), NSR Permit Number 21286, Special Condition Number 25, by failing to maintain the maximum allowed bleach production limit of 120 batches per year; 30 TAC §116.115(c), THSC, §382.085(b), NSR Permit Number 21286, Special Condition Numbers 26(A), (D), and (F) - (H), by failing to meet the following record-keeping requirements; records of the railcar unloading operations and records of the results of the required fugitive monitoring and maintenance program; 30 TAC §281.25(a)(4), §335.4, Multi-Section General Permit (MSGP) Number TXRO5H669, Part III, Section A(3)(a) and (b), and TWC, §26.121, by failing to identify and obtain a permit for non-storm water discharge. Specifically, the resinate from the cylinders was discharged onto the soil of the regulated entity's property; 30 TAC §281.25(a)(4) and MSGP Number TXRO5H669, Part III, Sections A(4)(a), (b), and (c), by failing to include the following items in the storm water pollution prevention plan (SWP3): 1) the inventory of exposed materials, specifically, storage of waste streams; 2) narrative description of all activities that could contribute pollutants to the storm water, specifically, leaking waste streams from pumps and piping; and 3) two outfall locations on the site map; 30 TAC §281.25(a)(4) and MSGP Number TXRO5H669, Part III, Sections A(5)(b), (f), and (h), by failing to include a detailed description in the SWP3 of the following: 1) spill prevention and response measures where spills could contribute pollutants to storm water discharges; 2) an established training program for all employees responsible for implementing or maintaining the activities of the SWP3; and 3) a method to record the required information for the quarterly visual monitoring. Three of the nine required elements of Section A(5) were not found; and 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to complete a hazardous waste determination of the two water waste streams generated as a result of the washing of compressed gas cylinders and the one-ton containers in the scrubber tanks; PENALTY: $5,100; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Stewart Tank Company & Oilfield Supply; DOCKET NUMBER: 2004-0228-MLM-E; TCEQ ID NUMBERS: 13715, TXR05L017, and RN102974409; LOCATION: 21714 Highway 82, Sherman, Grayson County, Texas; TYPE OF FACILITY: scrap metal recycling operation; RULES VIOLATED: 30 TAC §335.4, by failing to prevent welding and torch cutting wastes from being discharged to surface soils; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct an adequate hazardous waste determination on the welding and torch cutting waste stream generated at the facility; 30 TAC §328.63(c)(1) and THSC, §361.112(a), by failing to properly register the facility as a scrap tire facility prior to commencing scrap tire activities on the premises; 30 TAC §328.60(a) and THSC, §361.112(a), by failing to properly register the facility as a scrap tire storage facility prior to accumulating greater than 500 tires on the premises; Texas Pollutant Discharge Elimination System (TPDES), general Storm Water Permit Number TXR050000, Part III.A.4(b), and 30 TAC §305.125(1), by failing to include in the storm water prevention plan a narrative description of all activities that could potentially be expected to contribute pollutants to storm water; and TPDES general Storm Water Permit Number TXR050000, Part III.A.5(e), and 30 TAC §305.125(1), by failing to develop and implement best management practices to reduce pollutants in the welding and torch cutting area of the facility, which is exposed to storm water; PENALTY: $14,500; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2004-1918-IHW-E; TCEQ ID NUMBERS: 30486 and RN100524008; LOCATION: 9802 Fairmont Parkway, Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §335.2(b), by failing to properly dispose of hazardous waste at an authorized disposal site; 30 TAC §335.69(a)(3) and 40 CFR §262.34(a)(3), by failing to properly label two roll-off containers with the words "hazardous waste"; and 30 TAC §335.10(b)(18) and (22), by failing to indicate the proper waste classifications on two manifests for the hazardous waste shipped on June 18, 2004; PENALTY: $7,623; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Surepak, L.P.; DOCKET NUMBER: 2004-0894-AIR-E; TCEQ ID NUMBERS: DB2035O, 19425, and RN101964849; LOCATION: 5050 Duncanville Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: polystyrene packing plant; RULES VIOLATED: 30 TAC §116.115(c) and TCEQ Air Permit Number 19425, Special Condition Number 2, by failing to post the permit in a conspicuous place on the plant premises; 30 TAC §116.115(c) and TCEQ Air Permit Number 19425, Special Condition Number 4, by failing to have the appropriate stack configuration for Emission Points E1 and E2; 30 TAC §116.115(c) and TCEQ Air Permit Number 19425, Special Condition Number 6, by failing to keep all of the doors to the plant, other than the loading dock doors, building egress and ingress, closed at all times; 30 TAC §116.115(c) and TCEQ Air Permit Number 19425, Special Condition Number 11, by failing to record the total hours of operation of each expander per day, and material usage in pounds per day by bead type and expander; and 30 TAC §116.115(c) and TCEQ Air Permit Number 19425, Special Condition Number 13, by failing to limit the number of active expanders to five; PENALTY: $5,100; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200503072
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 26, 2005

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Notice of Public Meeting on Thursday, September 15, 2005, at Pershing Elementary School in San Antonio, Concerning the Phipps Plating State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the intent to take no further remedial action at the site and to delete the site from the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of intent to take no further remedial action at the Phipps Plating state Superfund site (site) and to delete the site from the state Superfund registry. The state registry is the list of state Superfund sites that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the ED has determined that due to removal actions that have been performed, the site no longer presents such an endangerment. This combined notice of intent was also published in the *San Antonio Express News* on August 5, 2005.

The site was proposed for listing on the state Superfund registry in the July 22, 1997, issue of the *Texas Register* (24 TexReg 6897). The site, including all land, structures, appurtenances, and other improvements, is located at 301 - 305 East Grayson Street, San Antonio, Bexar County, Texas. The site also includes any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

Phipps Plating started operating an electroplating metal parts and fixtures facility in 1948. The San Antonio regional office of the Texas Natural Resource Conservation Commission (TNRCC), predecessor agency of the TCEQ, inspected the abandoned site in May 1993. The TNRCC conducted an emergency removal of sludge and drummed waste and then secured access to the site by fencing the perimeter and securing all entrances to the building. In November 1994, the TNRCC conducted a preliminary assessment inspection to assess the site for the United States Environmental Protection Agency. Upon determination that the site did not qualify for the National Priorities List, the site was proposed to the state Superfund registry. A remedial investigation was conducted and soil contaminated with metals was removed from the site. These removal actions resulted in off-site soils being restored to residential use and on-site soils being restored to commercial/industrial use.

Tetrachloroethene (PCE) has impacted shallow groundwater under the site; however, the source of the contamination is upgradient, northeast, of the site. The groundwater flow is northeast to southwest. The TCEQ Field Operations Division will conduct further investigation.

Notice has been filed in the Bexar County real property records that the site is designated for commercial/industrial use.

As a result of the removal actions that have been performed at the site, the ED has determined that the site no longer presents an imminent and substantial endangerment to public health and safety, and the environment. No further action is necessary at the site and the site is eligible for deletion from the state registry of Superfund sites as provided by 30 TAC §335.344(c).

The commission will hold a public meeting to receive comments on the proposed deletion of the site and the determination to take no further remedial action. This public meeting will be legislative in nature and is not a contested case hearing under Texas Government Code, Chapter 2001. The public meeting will be held September 15, 2005, at 7:00 p.m., in the cafeteria of Pershing Elementary School, 600 Sandmeyer Street in San Antonio, Texas.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., September 15, 2005, and should be sent in writing to Kristy Mauricio, Project Manager, TCEQ, Remediation Division, MC 143, P. O. Box 13087, Austin, Texas 78711-3087 or by facsimile (512) 239-2450. The public comment period for this action will end at the close of the public meeting on September 15, 2005.

A portion of the record for this site, including documents pertinent to the proposed deletion of the site, is available for review during regular business hours at the San Antonio Central Library, 600 Soledad Street, San Antonio, Texas, (210) 207-2500. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2141. Requests should be made as far in advance as possible.

For further information regarding this meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363.

TRD-200503066
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 26, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of July 20, 2005 through July 21, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BGM LAND INVESTMENTS, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014589001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility will be located approximately 2,200 feet north of Morton Road and approximately 300 feet east of Porter Road in Harris County, Texas.

BEARPEN CREEK has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014614001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located along County Road 2526, on the west bank of Bearpen Creek, 6,000 feet east of the intersection of State Route 35 and County Road 2526 in Hunt County, Texas.

WILLIAM EMMETT HARTZOG has applied for a renewal of TPDES Permit No. 12917-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,600 gallons per day. The facility is located at 345 Gulf Bank Road in Harris County, Texas.

CITY OF IRAAN has applied for a renewal of Permit No. 10692-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. via evaporation and surface irrigation of 25 acres of non-public access ranch land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located east of the City of Iraan, adjacent to U.S. Highway 190, approximately 1,000 feet west of the Pecos River in Pecos County, Texas.

CITY OF KINGSVILLE has applied for a renewal of TPDES Permit No. 10696-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 2,640 feet east of U.S. Highway 77 on the south side of Farm-to-Market Road 2045 in Kleberg County, Texas.

MIRANDO CITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14207-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located due south of the Tex-Mex Railroad and 3,000 feet due west of the intersection of State Highway 359 and Farm-to-Market Road 2895 in Webb County, Texas.

CITY OF PORTLAND has applied for a renewal of TPDES Permit No. WQ0010478001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 1095 Moore Avenue (Farm-to-Market Road 893), 2,000 feet northwest of the intersection of Farm-to-Market Road 893 and U.S. Highway 181 in the City of Portland in San Patricio County, Texas.

CITY OF SAN AUGUSTINE has applied for a renewal of TPDES Permit No. 10268-002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 30,000 gallons per day. The facility is located 50 feet from City Lake, approximately 100 yards southeast of Farm-to-Market Road 2213 in San Augustine County, Texas.

CITY OF SAVOY has applied to renew Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14273-001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 128,000 gallons per day. The domestic wastewater treatment facility is located 900 feet west of Farm-to-Market Road 1752 and 2,000 feet north of U.S. Highway 82 in Fannin County, Texas.

THE CITY OF STAMFORD has applied for a renewal of TPDES Permit No. 10472-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 560,000 gallons per day. The facility is located approximately 8,400 feet northeast of the intersection of the FW&D Railroad and State Highway 6 and adjacent to Stink Creek in Jones County, Texas.

VALERO REFINING - TEXAS, L.P. which operates a petroleum coke handling facility, has applied for a renewal of TPDES Permit No. WQ0002540000, which authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The facility is located the north side of Corpus Christi Harbor, approximately one mile west of the lift bridge over the channel on Navigation Boulevard, on the north side of Tule Lake Channel, north of the City of Corpus Christi, Nueces County, Texas.

MARLIN ATLANTIS WHITE, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014570001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located adjacent to Gum Bayou, approximately 2.14 miles east of State Highway 3 and 600 feet north of Farm-to-Market Road 517 in Galveston County, Texas.

JOSEPH SHAU CHO WONG has applied for a renewal of Permit No. 13469-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day via non-public access subsurface drainfields with a minimum area of 74,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located adjacent to and north of U.S. Highway 180 and State Highway Loop 375 in El Paso County, Texas.

TRD-200503084
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2005

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Notice of Water Rights Application

Notices mailed July 2, 2005 through July 21, 2005:

APPLICATION NO. 5876; R H of Texas Limited Partnership, 17855 North Dallas Parkway, Suite 200, Dallas, Texas, 75287, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to 11.143, Texas Water Code, and TCEQ Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to modify and maintain an exempt dam and reservoir with a maximum capacity of 55.00 acre-feet of water and a surface area of 3.35 acres on an unnamed tributary of Rowlett Creek, tributary of the Trinity River, Trinity River Basin, for in-place recreational purposes. The centerline of the dam is N81.60 E, 2,865 feet from the southwest corner of the Jesse Gough Original Survey, Abstract No. 347, at Latitude 33.102 N, Longitude 96.724 W, approximately 11.37 miles south of the City of McKinney and approximately 3.27 miles west of the City of Allen, Collin County, Texas. Ownership of the innundated land is evidenced by a Commercial Contract of Sale, dated March 23, 2004. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on January 10, 2005. Additional information and fees were received on March 9, March 14, and March 24, and May 6, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 12, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5419A; Silverleaf Resorts LTD, 220 Holly Lodge Circle, Big Sandy, Texas 75755, applicant, seeks an amendment to Water Use Permit No. 5419 pursuant to Texas Water Code11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant owns Water Use Permit No. 5419, which authorizes the owner to maintain two existing dams and reservoirs on Holly Creek and an unnamed tributary of Big Sandy Creek, tributaries of the Sabine River, Sabine River Basin, for in-place recreational purposes in Wood County, Texas. Holly Lake, on Holly Creek, impounds 264 acre-feet of water. Whispering Wind Lake, on an unnamed tributary of Big Sandy Creek, impounds 168 acre-feet of water. Applicant seeks to amend Water Use Permit No. 5419 to divert and use not to exceed 40 acre-feet of water per year from a point on Big Sandy Creek for recreational purposes at a maximum diversion rate 0.49 cfs (220 gpm). Water diverted will be released into Whispering Wind Lake and stored, in order to maintain the reservoir full. The diversion point will be located at Latitude 32.721 N and Longitude 95.222 W, also being N 40.75 W, 3,240 feet from the southeast corner of the Brooks and Burleson Survey, Abstract No. 92, 14.5 miles southeast of Quitman in Wood County, Texas. The Commission will

review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on July 2, 2004, and requested information and fees were received on September 7, 2004, and January 4 and March 23, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 27, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200503085
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 5, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Bell County Water Control and Improvement District 2; DOCKET NUMBER: 2005-0474-MWD-E; IDENTIFIER: Regulated Entity Numbers (RN) 101610418 and 101610491; LOCATION: Little River, Bell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1) and (5), 319.7(c), and 319.11, Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011091001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids (TSS) and five-day biochemical oxygen demand (BOD5), by failing to report noncompliances of 40% above effluent limits, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operating and maintained, by failing to properly conduct residual chlorine analysis, by failing to use a proper flow measuring device, by failing to maintain chain of custody records, by failing to prevent the discharge and accumulation of sludge in the receiving stream, and by failing to submit a complete annual sludge report; PENALTY: $24,264; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Bosqueville Green Acres Water Supply Corporation; DOCKET NUMBER: 2005-0480-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1550080, RN101217008; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(B)(iii), (h) - (j), and (m)(1), by failing to keep on file, and make available for review, a record of operations and disinfectant residual monitoring results, by failing to properly seal the hypochlorination solution container, by failing to make available a record of plumbing ordinances or service agreements with customers, by failing to complete customer service inspection certificates, and by failing to conduct annual inspections on the ground storage and pressure tanks; 30 TAC §290.121(b)(1), by failing to keep on file and make available for review an up-to-date microbiological monitoring plan; 30 TAC §290.42(e)(5) and (l), by failing to keep a supply of calcium hypochlorite on hand and by failing to keep on file and make available for review a plant operations manual; 30 TAC §290.45(b)(1)(C)(i), by failing to provide a well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.43(c)(4), by failing to equip the water storage tank with a water level indicator; PENALTY: $1,046; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: CHS Inc.; DOCKET NUMBER: 2005-0688-PST-E; IDENTIFIER: RN100529015; LOCATION: Crosbyton, Crosby County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $720; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768;

REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(4) COMPANY: Coastal Bend Youth City; DOCKET NUMBER: 2005-0498-MWD-E; IDENTIFIER: TPDES Permit Number 11689001, RN102179124; LOCATION: Driscoll, Nueces County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11689001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS and pH; PENALTY: $4,480; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: Comal Independent School District; DOCKET NUMBER: 2005-0561-EAQ-E; IDENTIFIER: Edwards Aquifer Site Registration Number 13-4101101, RN104421649; LOCATION: Canyon City, Comal County, Texas; TYPE OF FACILITY: 80-acre site; RULE VIOLATED: 30 TAC §213.23(a)(1)(B), by failing to receive commission approval of a contributing zone plan; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of Cotulla; DOCKET NUMBER: 2005-0577-MWD-E; IDENTIFIER: RN101920148; LOCATION: Cotulla, La Salle County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10153001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for dissolved oxygen (DO), ammonia, pH, TSS, and five-day carbonaceous biochemical oxygen demand; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: El Paso Materials, L.L.C.; DOCKET NUMBER: 2004-1845-AIR-E; IDENTIFIER: RN104064241; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: aggregate processing; RULE VIOLATED: 30 TAC §111.155 and THSC, §382.085(b), by failing to prevent emissions of particular matter; and 30 TAC §116.115(a)(1), New Source Review Permit Number 70239, and THSC, §382.085(b), by failing to meet the minimum distance of 920 feet from the primary rock crusher to the property line; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2005-0018-AIR-E; IDENTIFIER: Air Account Numbers NE0120H and NE0122D, RN102534138 and RN100235266; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to prevent unauthorized volatile organic compound (VOC) emissions from being released when a section of wrought iron underground transfer pipe ruptured; 30 TAC §122.32 and THSC, §382.085(b), by failing to prevent a discharge of hydrogen sulfide; and 30 TAC §116.715(a), New Source Review Flexible Air Permit Number 8803A, and THSC, §382.085(b), by failing to prevent unauthorized VOCs from being released; PENALTY: $12,140; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Insight Iniquity Acquisition Partners, LP; DOCKET NUMBER: 2005-0694-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 57213, RN102345410; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: unmanned fueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and (B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate and by failing to make available to a common carrier, a valid, current delivery certificate; and 30 TAC §334.48(c), by failing to conduct inventory effective manual or automatic inventory control procedures for the UST system; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Intercontinental Terminals Company; DOCKET NUMBER: 2005-0486-AIR-E; IDENTIFIER: Air Account Number HG0403N, RN100210806; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: marine loading terminal and storage plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 1078, and THSC, §382.085(b), by failing to prevent 1,127 pounds of unauthorized butadiene emissions; PENALTY: $3,180; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Bill McCoy dba McCoy's Bargin Barn; DOCKET NUMBER: 2005-0826-PST-E; IDENTIFIER: RN102038312; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: convenience storage with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to have all records pertaining to petroleum storage tanks available for inspection; 30 TAC §334.8(c)(5)(C), by failing to label underground petroleum storage tanks according to the registration and self-certification form; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detector; and 30 TAC §334.48(c), by failing to conduct inventory control; PENALTY: $5,712; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Motiva Enteprises L.L.C.; DOCKET NUMBER: 2005-0347-AIR-E; IDENTIFIER: Air Account Number JE0095D, RN100209451; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and §116.715(a) and (c)(7), Permit Number 8404, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable limits; and 30 TAC §101.201(a) and THSC, §382.085(b), by failing to submit a complete notification of a reportable emissions event; PENALTY: $10,659; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Vilas Kumar dba New Road Texaco; DOCKET NUMBER: 2005-0202-PST-E; IDENTIFIER: RN102655446; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct proper inventory control; 30 TAC §334.50(a)(1) and the Code, §26.3475(a), by failing to provide a method of release detection for the UST system; and 30 TAC §334.10(b), by failing to have required UST records maintained, readily accessible, and available for inspection; PENALTY: $8,800; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Onyx Environmental Services L.L.C.; DOCKET NUMBER: 2004-1438-MLM-E; IDENTIFIER: Air Account Number JE0024D, RN102599719; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: hazardous waste disposal; RULE VIOLATED: 30 TAC §122.143(4), Industrial Hazardous Waste (IHW) Permit Number 50212-001, Air Permit Number O-1509,

and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; 30 TAC §117.219(f)(6)(B) and §122.143(4), Air Permit Number O=01509, IHW Permit Number 50212-001, and THSC, §382.085(b), by failing to maintain and record the hours of operation of the deep well emergency gemerator; and 30 TAC §101.201(b)(7) and THSC, §382.085(b), by failing to speciate particulate matter on the final record of emissions events; PENALTY: $12,768; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Permian Tank & Manufacturing, Inc.; DOCKET NUMBER: 2005-0541-AIR-E; IDENTIFIER: RN103898771; LOCATION: Kilgore, Rusk County, Texas; TYPE OF FACILITY: tank manufacturing; RULE VIOLATED: 30 TAC §116.110(a)(1) and (4) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit for the surface coating and dry abrasive cleaning operations; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: City of Poteet; DOCKET NUMBER: 2003-1277-MWD-E; IDENTIFIER: TPDES Permit Number 13630001, RN102078417; LOCATION: Poteet, Atascosa County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13630001, and the Code, §26.121(a), by failing to meet the effluent limits for ammonia nitrogen, flow, and BOD5, by failing to timely submit the discharge monitoring reports, and by failing to analyze its sludge and submit the annual sludge report; the Code, §26.121(a)(2), by allowing sludge and solids to accumulate in the receiving stream; 30 TAC §317.3, by failing to properly maintain the on-site lift station; 30 TAC §317.6(b)(1)(C), by failing to have scales to measure daily chlorine usage; and 30 TAC §319.7(c), by failing to maintain calibration records for its dissolved oxygen, pH, and chlorine meters; PENALTY: $14,620; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Ali Hamid Corporation dba Quick Stop 21; DOCKET NUMBER: 2004-2079-PST-E; IDENTIFIER: RN102225430; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of Stage II equipment; PENALTY: $4,480; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Amado Ramirez dba Ramirez Drive Inn; DOCKET NUMBER: 2005-0518-PST-E; IDENTIFIER: PST Facility Identification Number 76468, RN104469523; LOCATION: Zapata, Zapata County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a proper release detection method; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: Barbara Repka dba Repka's Grocery; DOCKET NUMBER: 2005-0703-PWS-E; IDENTIFIER: PWS Number 2370079, RN101211670; LOCATION: Brookshire, Waller County, Texas; TYPE OF FACILITY: gas station with a domestic well; RULE VIOLATED: 30 TAC §290.39(e) and (h)(1), by failing to submit "as-built" plans, specifications, and engineering reports, and receive written approval from the commission, prior to the construction or modification of the PWS and have them available for review; and 30 TAC §290.41(c)(1)(F), by failing to have the required sanitary control easement, granted exception, or an approved substitute covering all property; PENALTY: $120; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: S.K. Master, Inc. dba A J Food Mart; DOCKET NUMBER: 2005-0691-PST-E; IDENTIFIER: PST Facility Identification Number 35221, RN101845642; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,376; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Southern Star, Inc. dba Southern Star Shrimp Farm; DOCKET NUMBER: 2005-0718-IWD-E; IDENTIFIER: TPDES Permit Number 04244, RN101527034; LOCATION: Rio Hondo, Cameron County, Texas; TYPE OF FACILITY: shrimp farm; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number 04244, by failing to comply with permitted effluent limits for TSS, DO, and carbonaceous biochemical oxygen demand; PENALTY: $2,660; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(22) COMPANY: Stanley Lake Municipal Utility District; DOCKET NUMBER: 2005-0901-MWD-E; IDENTIFIER: RN102076338; LOCATION: Montgomery, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0011367001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total chlorine residual; PENALTY: $2,640; ENFORCEMENT COORDINATOR: John Muennink, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Sun Valley Distribution, Inc.; DOCKET NUMBER: 2005-0735-PST-E; IDENTIFIER: RN100813229; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline refueling station; RULE VIOLATED: 30 TAC §334.10(b)(1)(B) and §334.48(g), by failing to maintain UST records on the premises of the UST facility; §334.8(c)(4)(A)(vii) and (5)(A)(i), (B)(ii), and (C), and the Code, §26.3467(a), by failing to renew their delivery certificate, by failing to make available to a common carrier a valid, current delivery certificate, and by failing to ensure that permanent tags, labels, or markings were applied or affixed to the immediate area of the UST fill tube; 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(i)(II) and the Code, §26.3475(c), by failing to monitor the USTs for releases; and 30 TAC §334.49(c)(4)(C), by failing to test the cathodic protection system; PENALTY: $8,568; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(24) COMPANY: The Lighted Fishing Pier, L.L.C.; DOCKET NUMBER: 2005-0439-PWS-E; IDENTIFIER: PWS Number 0840205, RN101181253; LOCATION: Hitchcock, Galveston County, Texas; TYPE OF FACILITY: fishing pier; RULE VIOLATED: 30 TAC §290.109(b)(2), (c)(2)(F) and (3)(A)(ii), and (f)(1)(B), and THSC, §341.031(a), by exceeding the maximum contaminant level (MCL) for total coliform bacteria, by failing to collect the proper number of additional routine samples, by failing to collect and submit repeat water samples for bacteriological analysis, and by exceeding the acute MCL for total fecal coliform; PENALTY: $1,525; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE:

5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Wm. G. Johnson Oil Company dba Tiger Tote 102; DOCKET NUMBER: 2005-0526-PST-E; IDENTIFIER: PST Facility Identification Number 44722; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all installed spill and overfill prevention devices are maintained in good operating condition; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Winkler Water Supply Corporation; DOCKET NUMBER: 2005-0726-PWS-E; IDENTIFIER: PWS Number 1750023, RN101212017; LOCATION: near Streetman, Navarro County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by allegedly having exceeded the maximum contaminant limit for trihalomethanes; PENALTY: $258; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200503067
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 26, 2005

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: July Semiannual GPAC/SPAC Report Due July 15, 2004

Barbara Oldenburg, Democratic Party of Collin County, 4101 Whistler, Plano, Texas 75093

John R. Pitts Jr., Make Texas Proud Committee, 920-B Congress Ave., Austin, Texas 78701

Deadline: Semiannual GPAC/SPAC Report Due January 18, 2005

John R. Pitts Jr., Make Texas Proud Committee, 920-B Congress Ave., Austin, Texas 78701

Deadline: Semiannual J/COH Report Due January 18, 2005

Lawrence Allen Jr., 4302 Grapevine, Houston, Texas 77045

Deadline: 8 Days Before an Election Report Due April 29, 2005

Brigido H. Mireles, Citizens for Diversity in Leadership Roles, 6 Timberline Dr., Round Rock, Texas 78664-9409

Deadline: Monthly Report Due March 7, 2005

William Mahomes, Jr., African American Leadership Council PAC, 900 Jackson St., Suite 540, Dallas, Texas 75202

Terry R. Boucher, Texas Osteopathic Medical Assn. PAC, 1415 Lavaca St., Austin, Texas 78701-1634

Deadline: Monthly Report Due May 5, 2005

Peter Hwang, Houston 80-20, 8300 Bender Rd., Humble, Texas 77396

William Mahomes, Jr., African American Leadership Council PAC, 900 Jackson St., Suite 540, Dallas, Texas 75202

Deadline: Monthly Report Due June 6, 2005

Peter Hwang, Houston 80-20, 8300 Bender Rd., Humble, Texas 77396

TRD-200503082
David Reisman
Executive Director
Texas Ethics Commission
Filed: July 27, 2005

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Office of the Governor

Request for Grant Applications for the Residential Substance Abuse Treatment Program for State Prisoners

The Governor's Criminal Justice Division (CJD) is soliciting applications for projects that support substance abuse treatment for offenders for the federal fiscal year 2006 grant cycle.

Purpose: The purpose of the Residential Substance Abuse Treatment (RSAT) Program is to provide residential substance abuse treatment projects within state and local correctional facilities and jail-based substance abuse projects within jails and local correctional facilities.

Available Funding: Federal funding is authorized for these projects under the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322, §1901). A maximum of $3,900,000 is available for federal fiscal year 2006 under this Request for Grant Applications.

Required Match: Grantees must provide matching funds of at least 25 percent of the total project expenditures. This requirement must be met through cash contributions.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3, and all statutes, regulations, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) rent or building leases (except for lease of space for the delivery of treatment services such as offices for counselors, group meeting rooms, etc.);

(2) utilities;

(3) building and lawn maintenance;

(4) insurance;

(5) medical and dental care;

(6) vehicle expenses unless used for treatment purposes;

(7) uniforms for personnel;

(8) training for continuing education and licensing requirements, unless the grantee pays these costs for all non-RSAT funded personnel;

(9) administrative costs;

(10) construction or land acquisition;

(11) services in a private treatment facility;

(12) indirect costs;

(13) aftercare services provided after release from the facility;

(14) admission fees or tickets to any amusement park, recreational activity or sporting event;

(15) fundraising;

(16) lobbying;

(17) membership dues for individuals;

(18) overtime pay;

(19) promotional gifts;

(20) proselytizing or sectarian worship;

(21) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(22) vehicles or equipment for government agencies that are for general agency use; and

(23) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting).

Eligible Applicants:

(1) state agencies operating secure correctional facilities;

(2) counties operating secure correctional facilities; and

(3) community supervision and corrections departments operating community corrections facilities as defined in the Texas Government Code §509.001 and §509.006.

Requirements:

(1) Projects are required to provide housing, meals, snacks, clothing, transportation, dental care and medical treatment for offenders in the program;

(2) RSAT funds must be applied to the treatment component only;

(3) Urinalysis or other proven reliable forms of drug and alcohol testing is required for program participants and former participants while they remain in the custody of the state or local government;

(4) Projects must focus on the substance abuse problems of the offender using cognitive, behavioral, social, vocational, and other skills to resolve the substance abuse and related problems;

(5) Individualized treatment plans must be developed for each offender when the offender enters the program;

(6) Juvenile projects must comply with the Juvenile Justice and Delinquency Prevention Act of 2002 (Public Law 107-273, 42 U.S.C. 5601 et seq., as amended);

(7) Projects must work with social service and rehabilitation programs to place offenders in appropriate aftercare placement when the offenders complete the program;

(8) Programs should be designed to give priority to offenders that have six to twelve months remaining in their term of confinement so that they may be released from jail or prison instead of returning to the general jail or prison population after completing the treatment program;

(9) No more than ten percent of the award may be used for treatment of parolees for a period not to exceed one year after release from a state correctional facility;

(10) Programs operated in local, secure correctional or detention facilities must last at least six months and no more than 12 months and must provide treatment in a completely separate facility or a dedicated housing unit within a facility for the exclusive use by participating offenders; and

(11) Programs offered in jails must last at least three months, be science based and proven effective, and make every effort to separate the participants from the general correctional population.

Project Period: Grant-funded projects will begin on or after October 1, 2005, and will expire on or before September 30, 2006.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address at http://www.governor.state.tx.us/divisions/cjd/formsapps/view.

Preferences: Preference will be given to continuation projects and applicants who provide aftercare services to project participants. Aftercare services include the coordination of services between the correctional treatment program and other human service and rehabilitation programs such as education and job training, parole supervision, halfway houses, and self-help and peer groups that support the continued rehabilitation of the offender.

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before September 6, 2005.

Selection Process: Applications are reviewed by CJD staff members or a group selected by the Executive Director of CJD. CJD will make all final funding decisions based on eligibility, strategic approach of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Judy Switzer at jswitzer@governor.state.tx.us or at (512) 463-1919.

TRD-200503089
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: July 27, 2005

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs to collect comment on its proposed Section 504 Policy rule. The hearing will be from 2-5 p.m. on Tuesday, August 23, 2005, and will be held in the 4th Floor Board Room of TDHCA, 507 Sabine St., Austin, Texas 78701.

The policy draft can be accessed on TDHCA's website by visiting: http://www.tdhca.state.tx.us/pmcomp/index.htm

All interested parties are invited to attend to express their views with respect to the proposed Section 504 Policy rule. Questions or requests for additional information may be directed to Michael Lyttle at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 4475-4542; and/or michael.lyttle@tdhca.state.tx.us.

Any interested persons unable to attend the hearing may submit their views in writing to Michael Lyttle prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Michael Lyttle at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512)

475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200503081
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 27, 2005

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Legislative Budget Board

Notice of Contract Award

The Legislative Budget Board (LBB) announces this notice of contract award.

The original notice of request for proposals (HB7.2005.SPR.0011) was published in the May 13, 2005, issue of the *Texas Register.*

The consultant will advise and assist the LBB in conducting a management and performance review of the La Marque Independent School District.

The contract is awarded to SDSM, Inc. located at P.O. Box 27619, Austin, Texas 78755. The total amount of the contract is estimated at $110,000. The contract was executed on July 11, 2005. The term of the contract is July 11, 2005 until June 30, 2006. The final report is due on or about January 9, 2006.

TRD-200502962
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 21, 2005

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Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0013) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of the Wharton Independent School District (WISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about August 29, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on July 20, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http://www.lbb.state.tx.us after 10:00 a.m. CZT, on July 20, 2005.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on August 1, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than August 2, 2005, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letters of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on August 8, 2005. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on August 15, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - July 20, 2005, after 10:00 a.m. CZT;

Questions Due - August 1, 2005, 2:00 p.m. CZT;

Official Responses to Questions Posted - August 2, 2005, or as soon thereafter as practical;

Letters of Intent Due - August 8, 2005, 2:00 p.m. CZT;

Proposals Due - August 15, 2005, 2:00 p.m. CZT;

Contract Execution - August 29, 2005, or as soon thereafter as practical;

Commencement of Project Activities - August 29, 2005, or as soon thereafter as practical.

TRD-200502963
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 21, 2005

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Notice of Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for Proposals (RFP # HB7.2005.SPR.0014) from qualified, independent firms to provide consulting services to the LBB. The successful respondent will assist the LBB in conducting a management and performance review of the Edcouch-Elsa Independent School District (EEISD). The LBB reserves the right, in its sole discretion, to award one or more contracts for this review. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 14, 2005, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Bill Parr, Assistant Director, Legislative Budget Board, 1501 N. Congress, Fifth Floor, Austin, Texas 78701, telephone number: (512) 463-1200, to obtain a copy of the RFP. The LBB will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick up at the above-referenced address on July 20, 2005, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The LBB also made the complete RFP available electronically on the Texas

Marketplace at: http://esbd.tbpc.state.tx.us and on the LBB website at http://www.lbb.state.tx.us after 10:00 a.m. CZT, on July 20, 2005.

Questions: All questions regarding the RFP must be sent via facsimile to Bill Parr at (512) 475-2902, not later than 2:00 p.m. CZT, on August 3, 2005. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace and the LBB website no later than August 4, 2005, or as soon thereafter as practical.

Mandatory Letters of Intent: All potential respondents must submit non-binding Mandatory Letters of Intent to Propose, which must be received in the issuing office no later than 2:00 p.m. CZT, on August 19, 2005. Only the proposals of those respondents who submit a timely Letter of Intent will be considered.

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. CZT, on August 31, 2005. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The LBB will make the final decision regarding the award of a contract or contracts. The LBB reserves the right to award one or more contracts under this RFP.

The LBB reserves the right to accept or reject any or all proposals submitted. The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The LBB shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - July 20, 2005, after 10:00 a.m. CZT;

Questions Due - August 3, 2005, 2:00 p.m. CZT;

Official Responses to Questions Posted - August 4, 2005, or as soon thereafter as practical;

Letters of Intent Due - August 19, 2005, 2:00 p.m. CZT;

Proposals Due - August 31, 2005, 2:00 p.m. CZT;

Contract Execution - September 14, 2005, or as soon thereafter as practical;

Commencement of Project Activities - September 14, 2005, or as soon thereafter as practical.

TRD-200502964
Bill Parr
Assistant Director
Legislative Budget Board
Filed: July 21, 2005

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Texas Department of Licensing and Regulation

Vacancies on Advisory Board on Barbering

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Advisory Board on Barbering (Board) established by Texas Occupations Code, Chapter 1601. The purpose of the Advisory Board on Barbering is to advise the Texas Commission of Licensing and Regulation and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to barbering; and other issues affecting barbering.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of two members, each of whom: is engaged in the practice of barbering as a Class A barber and does not hold a barbershop permit; two members, each of whom: is a barbershop owner who holds a barbershop permit; and one member who holds a permit to conduct or operate a barber school. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

This announcement is for the five positions as described above.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874 or e-mail jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department's website at www.license.state.tx.us. Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200503075
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 26, 2005

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Vacancies on Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Advisory Board on Cosmetology (Board) established by Texas Occupations Code, Chapter 1602. The purpose of the Advisory Board on Cosmetology is to advise the Texas Commission of Licensing and Regulation and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to cosmetology; and other issues affecting cosmetology.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one member who holds a license for a beauty shop that is part of a chain of beauty shops; one member who holds a license for a beauty shop that is not part of a chain of beauty shops; one member who holds a private beauty culture school license; and two members who each hold an operator license. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year. This announcement is for the five aforementioned positions.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874 or e-mail jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department's website at www.license.state.tx.us. Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200503074
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 26, 2005

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Texas Lottery Commission

Instant Game Number 608 "Bee Lucky"

1.0 Name and Style of Game.

A. The name of Instant Game No. 608 is "BEE LUCKY". The play style is "three in a line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 608 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 608.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 $100, $1,000, HONEY SYMBOL, HIVE SYMBOL, COMB SYMBOL, SOUND SYMBOL, BIRD SYMBOL, LEMONADE SYMBOL, STAR SYMBOL, LEAF SYMBOL, WISHBONE SYMBOL, FLOWER SYMBOL, MAGNIFYING GLASS SYMBOL, SUN SYMBOL, 7 SYMBOL, CLOVER SYMBOL and HORSESHOE SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 608 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
HONEY SYMBOL	HONEY
HIVE SYMBOL	HIVE
COMB SYMBOL	COMB
SOUND SYMBOL	SOUND
BIRD SYMBOL	BIRD
LEMONADE SYMBOL	LMNAD
STAR SYMBOL	STAR
LEAF SYMBOL	LEAF
WISHBONE SYMBOL	WSHBN
FLOWER SYMBOL	FLOWR
MAGNIFYING GLASS SYMBOL	MGNFY
SUN SYMBOL	SUN
7 SYMBOL	SEVEN
CLOVER SYMBOL	CLOVR
HORSESHOE SYMBOL	H-SHOE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 608 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (608), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 608-0000001-001.

L. Pack - A pack of "BEE LUCKY" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BEE LUCKY" Instant Game No. 608 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BEE LUCKY" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals 3 (three) identical play symbols in any one row either diagonally, vertically or horizontally, the player wins prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than one occurrence of three like symbols in a row, column or diagonal.

2.3 Procedure for Claiming Prizes.

A. To claim a "BEE LUCKY" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BEE LUCKY" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BEE LUCKY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BEE LUCKY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BEE LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel

as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 13,200,000 tickets in the Instant Game No. 608. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 608 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,531,200	8.62
$2	528,000	25.00
$4	369,600	35.71
$5	158,400	83.33
$10	52,800	250.00
$20	52,800	250.00
$50	13,200	1,000.00
$100	5,390	2,448.98
$1,000	275	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 608 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 608, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200503078
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 26, 2005

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Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience and Necessity for Service Area Boundaries within Jack County

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on July 15, 2005, for service area exception within Jack County, Texas.

Docket Style and Number: Application of Fort Belknap Electric Cooperative, Incorporated (FBEC) for a Certificate of Convenience and Necessity for Service Area Boundaries for a Service Area Exception within Jack County. Docket Number 31359.

The Application: FBEC requested a service area exception to allow it to provide electric service to a single customer, Mr. Jeral Massey. FBEC has requested that Texas New Mexico Power Company (TNMP) agree to a service area exception to allow for FBEC to serve Mr. Massey because FBEC has facilities closest to the site. FBEC and TNMP agree to the service area exception.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 15, 2005 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31359.

TRD-200503064
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2005

♦ ♦ ♦

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on July 21, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., doing business as SBC Texas, to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the Royse City Exchange (SBC Texas) and the Quinlan Exchange (Verizon). Docket Number 31390.

The Application: This minor boundary amendment is being requested to revise the boundary between two new subdivisions, Sandy Creek and Hidden Meadows, being developed along County Road 2546 in order that both subdivisions are served by one company. If granted, all of Sandy Creek will be within the serving area of Verizon, and all of Hidden Meadows will be in the serving area of SBC Texas. Verizon has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 15, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31390.

TRD-200503060
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2005

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on July 21, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., doing business as SBC Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the North Richland Hills Zone (SBC Texas) and the Grapevine Exchange (Verizon). Docket Number 31391.

The Application: This minor boundary amendment is being requested to revise the boundary between the North Richland Hills Zone (Dallas Metropolitan Exchange) of SBC Texas and the Grapevine Exchange of Verizon. The proposed boundary will realign the boundary to allow SBC Texas to serve all buildings on the premises of the Pleasant Run Baptist Church. Verizon has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 15, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31391.

TRD-200503061
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2005

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Notice of Application for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 15, 2005, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Budget Phone, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 31364.

The Application: Budget Phone, Inc. is requesting ETC designation in order to be eligible to receive federal universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Budget Phone, Inc. seeks ETC designation in the Southwestern Bell, Sprint/United Telephone Company of Texas, Inc., and Verizon SW exchanges. Budget Phone, Inc. holds Service Provider Certificate of Operating Authority Number 60231.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 15, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31364.

TRD-200503017
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2005

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Notice of Application to Amend Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 22, 2005, to amend designation as an eligible telecommunications carrier and eligible telecommunications provider.

Docket Title and Number: Application of DIALTONESERVICES, L.P. (DTS) to Amend its Designation as an Eligible Telecommunications Carrier and an Eligible Telecommunications Provider to Include Certain Exchanges Served by Valor Telecommunications of Texas, L.P. (Valor) and Sprint/United Telephone Company of Texas (Sprint). Docket Number 31399.

The Application: DIALTONESERVICES, L.P. is seeking to amend its designation as an eligible telecommunications carrier and as an eligible telecommunications provider pursuant to P.U.C. Substantive Rule §26.418 and §26.417 respectively, to provide service in designated exchanges served by Valor and Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 22, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31399.

TRD-200503070
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 2005

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Notice of Filing Made for a Tariff Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by Cameron Telephone Company, LLC-Texas (Cameron) with the Public Utility Commission of Texas (commission) on July 19, 2005 to make a tariff rate change.

Docket Title and Number: Application of Cameron Telephone Company, LLC-Texas for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 31374.

The Application: Cameron requests approval of a minor rate increase of 10% in its basic local service rate for business and residential customers in the following exchanges: Nome Exchange Area (253), High Island Exchange Area (286), and Gilchrist Exchange Area (286). The proposed effective date of this increase is November 1, 2005.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact Cameron Telephone Company, LLC-Texas at Attn: Regulatory Department, P.O. Box 167, Sulphur, LA 70664-0167 or call (337) 583-2111 during regular business hours.

Customers have a right to petition the commission for a review of this application. If the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is September 30, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing-and speech- impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800-735-2988.

TRD-200503059
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on July 22, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Sprint Communications Company L.P.'s (Sprint) request for two 1,000-blocks in the Spring rate center.

Docket Title and Number: Petition of Sprint Communications Company L.P. for Waiver of NeuStar Denial of Number Block Request in Spring Rate Center. Docket Number 31402.

The Application: Sprint submitted a petition to the Pooling Administrator (PA) to provide it with two 1,000-blocks in the Spring rate center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 10, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512)936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31402.

TRD-200503071
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 2005

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Request for Proposals for the Provision of Call Center and Fulfillment Services for the Texas Electric Choice Campaign

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Proposals (RFP) for the provision of call center and fulfillment services for the Texas Electric Choice Campaign. This RFP is being undertaken pursuant to the commission's statutory responsibility as provided for in the Public Utility Regulatory Act (PURA) §39.902(a) and (c).

To be considered, the proposals must arrive at the PUCT on or before the deadline stated on the RFP. This deadline is available on the PUCT website (www.puc.state.tx.us). The vendor must be prepared to commence service on September 1, 2005.

Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a proposal.

Project Description. This RFP contains two basic services for which a vendor is needed: (1) services necessary to set up and operate a call center to handle inbound inquiries about electric choice in Texas, including, but not limited to, all equipment, labor, programming costs, and customer service representative training, and (2) services necessary to set up and provide fulfillment of educational materials in response to customer inquiries received via telephone, mail, and the Internet. The commission will provide the vendor with the use of its toll-free 1-866-797-4839 telephone number and the Texas Electric Choice materials to be distributed to Texas customers upon request.

Selection Criteria. A proposal will be selected based on the ability of the proposer to provide the best value to the state. In addition to the proposer's ability to carry out all of the requirements contained in this RFP and demonstrated competence and qualifications of the proposer, the reasonableness of the proposed fee will be considered.

Requesting the Proposal. A complete copy of the RFP may be obtained by written request to Ben Delamater, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936-7058, or by e-mail ben.delamater@puc.state.tx.us. You may also download the RFP from the PUC website www.puc.state.tx.us, under Hot Topic Briefs, and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at http://esbd.tbpc.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received on or before the deadline stated on the RFP in the Public Utility Commission of Texas Central Records. Proposals received after the deadline will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. In determining the time and date of receipt, the commission will rely solely on the time/date stamp of Central Records.

TRD-200503088
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 2005

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Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Request for Proposals

Notice of Request for Proposals from Certified Public Accountants to provide audit and other professional services for the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association (the "Association").

Requesting the Proposal. A complete copy of the RFP may be obtained by writing Marvin Coffman, Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association, 6504 Bridge Point Parkway, Suite 450, Austin, Texas 78730, telephone number: (512) 476-5101.

Schedule of Events. To be considered for this engagement, your firm must meet the qualifications and satisfy the requirements set forth in the RFP. All inquiries concerning the RFP must be received by August 8, 2005. Please indicate your intent to submit a proposal by submitting a written Notification of Interest. The Notification of Interest is a prerequisite to submitting a proposal. The Notification may be faxed to Marvin Coffman by August 8, 2005 at fax number: (512) 472-1470.

Further Information. Firms that wish to submit a proposal and wish to obtain additional information related to the Association and its operations may schedule interviews/conferences with Marvin Coffman. Meetings will be at the offices of Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association at 6504 Bridge Point Parkway, Suite 450, Austin, Texas 78730, between 8:00 a.m. and 4:00 p.m. (CZT).

Deadline for Receipt of Proposals. Five (5) copies of the completed proposal must be received by 5:00 p.m. (CZT) on September 6, 2005. Please limit your proposal to twenty-five (25) pages, including any appendices that you deem pertinent.

Evaluation and Award Procedure: All proposals will be subject to evaluation by the Audit Committee of the Association. The selection and awarding of a contract will be based on criteria and procedures set forth in the RFP; including ability to provide the requested services, demonstrated competence and experience, and the reasonableness of the proposed fees. The Audit Committee reserves the right to accept or reject any or all proposals submitted and is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Audit Committee shall pay no costs incurred by any entity responding to this Notice or the RFP. Selection of a firm will be made during the third week of October 2005. Certain firms may be interviewed at that time. You will be notified in advance if your company is requested to make a presentation.

TRD-200503018
Bart A. Boles
Executive Director
Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association
Filed: July 25, 2005

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Texas Department of Transportation

Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this notice of a consultant contract award for providing Maintenance Division Business Requirement Development services. The request for proposal for Maintenance Division Business Requirement Development services was published in the *Texas Register* on February 4, 2005 (30 TexReg 617).

The consultant will develop and document functional requirements for a new maintenance management application. Based on the requirements, the consultant will also propose and document alternative solutions for the new system. The requirements and alternative solutions will be used to determine the feasibility of replacing the current Maintenance Management Information System (MMIS) with a new system which will extend the functionality of the existing application.

The selected consultant for these services is Dye Management Group, Inc., City Center Bellevue, Suite 1700, 500 108th Avenue NE, Bellevue, WA 98004. The total value of the contract is $365,124 and the contract work period started on July 19, 2005, and will continue until March 31, 2006. The final report is to be submitted on or before March 31, 2006.

For information concerning this notice, please contact Janice Mullenix, Contract Services, Texas Department of Transportation, 125 East 11th St., Austin, Texas 78701, (512) 463-1970.

TRD-200503039
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 25, 2005

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **http://www.dot.state.tx.us**. Click on Aviation, then click on Aviation Public Hearing. Or, contact

Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68-PILOT.

TRD-200503040
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 25, 2005

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The University of Texas System

Request for Proposal - Notice of Intent to Amend Existing Consultant Contract

The Office of External Relations is facing increased demands to assist U.T. System and its fifteen institutions in training and providing guidance to development professionals to provide additional resources to meet the educational needs of U.T. System through gifts, donations, and bequests.

Pursuant to a contract with U.T. System, Paul Youngdale is currently providing such consulting services to the System. At this time, it is necessary to amend the contract between U.T. System and Paul Youngdale.

As required by the provisions of *Texas Government Code*, Chapter 2254, prior to amending its contract with Paul Youngdale, U.T. System extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this invitation. Unless a better offer (as determined by U.T. System) is received in response to this invitation, U.T. System intends to enter into negotiations with Paul Youngdale, to amend U.T. System's contract with Paul Youngdale.

Scope of Work:

The successful consultant shall provide advice and assistance regarding planned giving. This includes being available to the development staff at U.T. institutions to answer planned giving questions, provide training, accompany gift officers on visits with donors, and assist with other planned giving opportunities.

Finding of Fact:

The Chancellor of U.T. System has made a finding that the consulting services are necessary. U.T. System does not currently have adequate staff with expertise in providing advanced training and consultation regarding planned giving.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which consultant has provided consulting services; (7) a statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this Invitation), any unique benefits consultant offers U.T. System, and any other information consultant desires U.T. System to consider in connection with consultant's offer; (8) information to assist U.T. System in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist U.T. System in assessing the consultant's knowledge of planned giving; and (10) information to assist U.T. System in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Selection Process:

Selection of the Successful Offer (defined as follows) submitted in response to this Invitation by the Submittal Deadline (defined as follows) will be made using the competitive process described as follows. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. U.T. System, on the basis of the offers initially submitted, without discussion, clarification or modification, may make the selection of the Successful Offer. In the alternative, U.T. System on the basis of negotiation may make selection of the Successful Offer with any of the consultants. At U.T. System's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers.

U.T. System will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. U.T. System will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer; however, U.T. System reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, U.T. System may permit a consultant to revise its offer in order to obtain the consultant's best final offer. U.T. System is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by U.T. System. U.T. System reserves the right to (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants, (b) reject any and all offers and re-solicit offers or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of U.T. System.

Criteria for Selection:

The Successful Offer will be the offer submitted in response to this Invitation by the Submittal Deadline that is the most advantageous to U.T. System, considering price and the evaluation factors established by U.T. System. U.T. System personnel will evaluate offers. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to U.T. System by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to U.T. System.

How to Respond; Submittal Deadline:

All offers must contain the information requested in the Specifications section of this Invitation and be received no later than 5:00 p.m., C.D.T., August 19, 2005. Submissions received after the deadline will not be considered. Offers must be submitted to Vice Chancellor Randa S. Safady, The University of Texas System, 210 West 6th Street, Austin, Texas 78701.

Questions:

Questions concerning this invitation and all offers in response to this request should be directed to Vice Chancellor Randa S. Safady, The University of Texas System, Austin, Texas 78701, (512) 499-4777, rsafady@utsystem.edu.

TRD-200503079
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: July 27, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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